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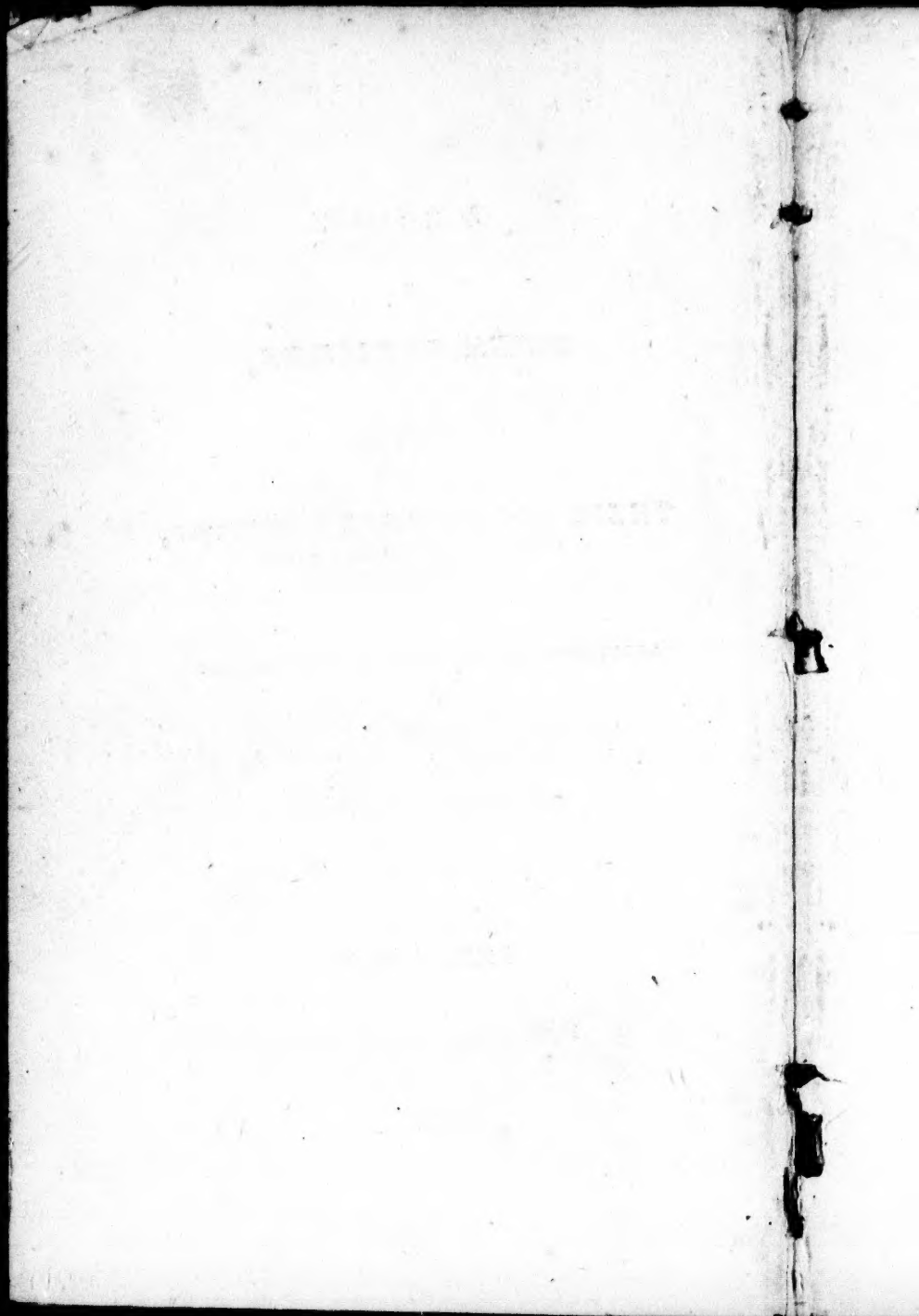
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**A GUIDE
TO
TOWN OFFICERS,**

SHEWING

**THEIR APPOINTMENT, DUTIES,
LIABILITIES, AND
PRIVILEGES:**

ACCORDING TO THE LAWS OF THE PROVINCE.

BY DANIEL DICKSON.

PICTOU, N. S.

PRINTED IN THE BEE OFFICE.

1837.

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A GUIDE

TO

ARMY OFFICERS

GENERAL

THEIR APPOINTMENT OFFICES
ALARMED AND
BETTER

APPROPRIATE TO THE AREA OF THE OFFICE

BY DURING OFFICE

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RESPECTFULLY DEDICATED,

By

THE AUTHOR.

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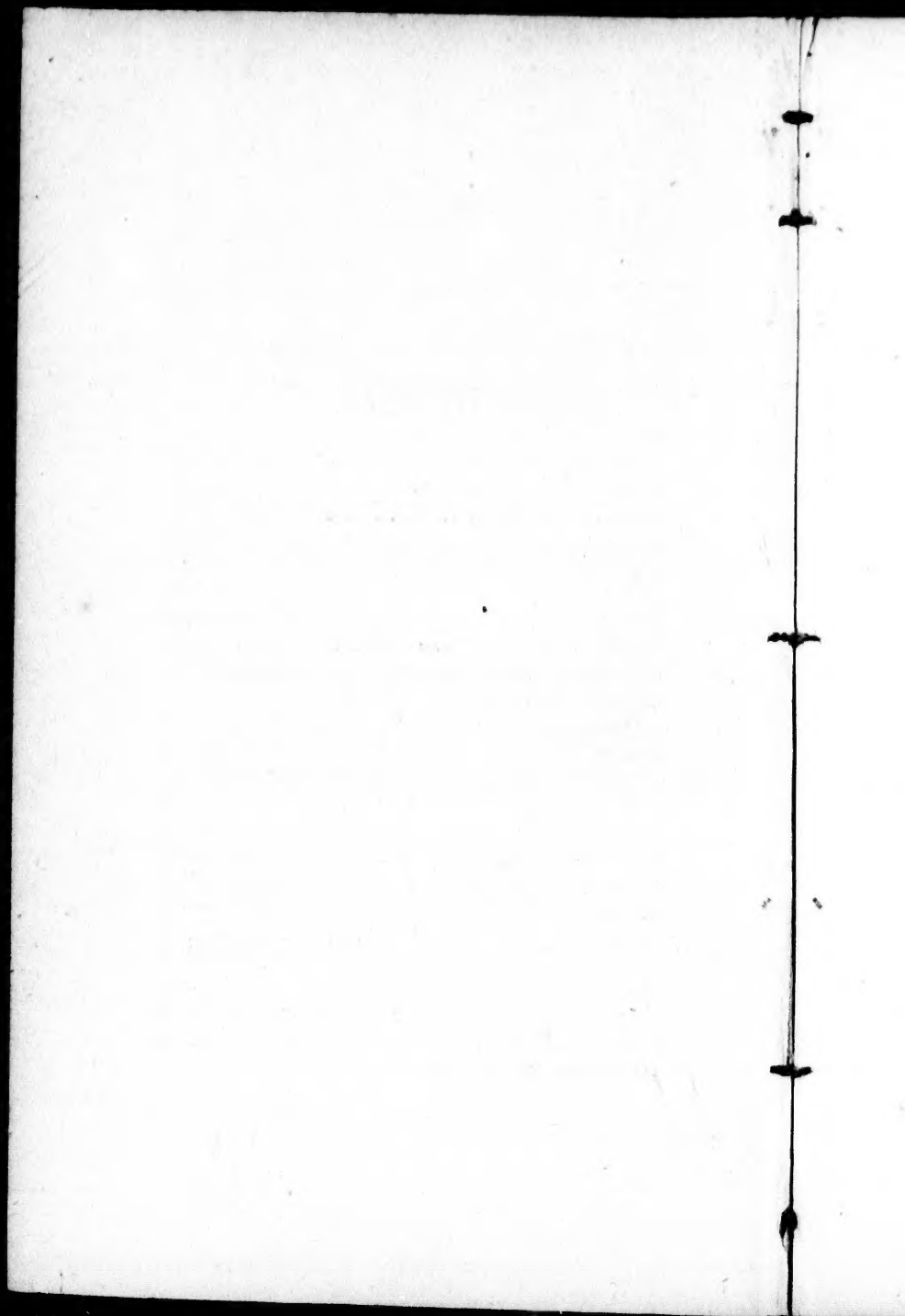
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General



PREFACE.

THE following work is intended as a Guide to Town Officers, who, at the time of their appointment, are frequently unacquainted with the duties they have to discharge, and the liabilities under which they labour. It includes the most important Township offices, which extend generally throughout the Province ; but, it is not altogether applicable to the *Town* of Halifax, where many of these offices are regulated by enactments of local application.

There is perhaps no department of law more closely connected with the ordinary transactions of life, than that which relates to Town Officers. Every man may be required to participate in the business of the public, and it is his interest to become acquainted with those duties which he is thus obliged to perform. Sir William Blackstone has very justly observed, that, "as every subject is interested in the preservation of the laws, it is incumbent on every man to be acquainted with those at least, with which he is immediately concerned ; lest he incur the censure as well as inconvenience, of living in society without knowing the obligations which it lays him under."

The necessity of something to serve as a guide to Town Officers, in the discharge of their duties, induced the author to undertake the present publication. In preparing it for the Press, he has spared no pains to render it intelligible to every reader; and he entertains the hope that the arrangement adopted will contribute to its usefulness. He cannot, however, flatter himself that it will be found free from defects; but he solicits from a generous public that indulgence which is generally extended to first impressions. Indeed, he feels confident that those who are acquainted with the complex and confused state of our Provincial Statutes, will not require any apology for sins either of omission or commission.

To the utility of the present work it may be objected, that the laws relative to Town Officers are liable to annual alterations. But, to obviate this objection, the author proposes, whenever such changes occur, to publish a small supplement, (which may be procured at a trifling expense;) and if, at any time, such alterations become material, and the present attempt meet with a favourable reception, an improved Edition may be published, including the other officers now omitted. The greater part of this work was written, and even printed, last year, but its publication has been postponed till the late prorogation of the Legislature, for the purpose of appending any alterations affecting it that might have occurred during the Session.

The size of the Book is adapted to the conve-

nience of those who may have occasion to carry it about with them in the discharge of their duties ; such as Overseers of Roads, Surveyors of Timber and Lumber, &c.; and to accomodate the price to the circumstances of all who may be appointed to a Town Office, it has been made as moderate as the expense of publication would admit. The only profit which the author ever expected or wished to derive, he has already fully realized in the valuable information that he has acquired in his researches ; and if the work promote the object intended, he will have the additional gratification of reflecting that his leisure hours have been not only profitably but usefully employed.

DANIEL DICKSON.

Pictou, April 28th, 1837.

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 ABBREVIATIONS AND REFERENCES EXPLAINED.

- 1 P. L. 106, means 1st Vol. Province Laws, page 106.
- 5 Geo. 3, c. 24, sec. 6, means the fifth year of the Reign of George the Third, chapter 24, section 6.
- 1 Burns' J. means 1st Vol. Burns' Justice of the Peace, *twenty-sixth Edition*.
- T. R. or Term. Rep.—Term Reports.
- Ch. Crim. Law—Chitty's Criminal Law.
- East's P. C.—East's Pleas of the Crown.
- Pet. Abr.—Petersdorf's Abridgment.
- Black. Com.—Blackstone's Commentaries.
- M. & S.—Maule and Selwyn's Reports.
- Ph. Ev.—Phillip's Evidence.
- H. Bl.—Henry Blackstone's Reports.
- Murd. Ep.—Murdoch's Epitome.
- do., ib.—the same.

CHAPTER I.

CONSTABLES.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To preserve the peace. 3. To keep order on the Lord's Day. 4. To arrest Criminal offenders—1. *Without Warrant*—2. *With Warrant*.—3. *Time, place, and manner of arresting; breaking open doors; backing Warrants*.—4. *What to be done after arrest*. 5. To execute search Warrants. 6. To execute all other Warrants of Justices. 7. To execute the Warrants and precepts of other officers.—1. *Of Coroners*.—2. *Of Overseers of the Poor*.—3. *Of Surveyors of Highways*.—4. *Of Commissioners of Streets*.—5. *Of Firewards*. 8. To apprehend Idle and Disorderly Persons. 9. To assist Landlords distraining for Rent. 10. To serve and execute process in civil suits. 11. To attend the Courts, &c.

III. THEIR LIABILITIES.

1. For refusing to accept the office. 2. For neglect of duty or misbehaviour in office. 3. For

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CHAPTER I.

CONSTABLES.

1. THEIR APPOINTMENT.

CONSTABLES are appointed annually in each County of the Province, by the Grand Jury and Court of Sessions.

Their Appointment is regulated by the Act of 1765, "for the choice of Town Officers," 5 Geo. 3, c. 1, 1 P. L. 106, as altered and amended by the Act of 1811, 51 Geo. 3. c. 24, 2 P. L. 79.

The Act of 1765 required all the Town Officers therein mentioned, to be appointed annually at the *first* Court of General Sessions of the Peace ; and limited (in most cases) the number of persons to be nominated by the Grand Jury for each office, and also the number to be appointed by the Court. But from the great increase of the Inhabitants in many of the Townships, this limited number was afterwards found to be insufficient, and the time fixed for appointing them, to occasion much inconvenience. The Act of 1811 was therefore

passed, which enacts—"That, in future, the Grand Juries, in the several Courts of General or Quarter Sessions of the Peace, at such term as the Justices of such Courts shall direct, shall, annually, nominate such number of fit and proper persons for each Township and District, as the said Justices shall direct, to execute and discharge the duties of Town Officers for such Township or District as they shall be appointed for respectively, out of whom the said Court of Session shall appoint such number as they may deem expedient to serve in the several offices to which they shall be so appointed; any law, usage, or custom to the contrary notwithstanding."—2 P. L. 79.

When any person so appointed a Town Officer leaves the Province, changes the town of his residence, or happens to die, within the period for which he was appointed to serve, the Act of 1765 provides, that "in such case, any two of His Majesty's Justices of the Peace for the County, shall and may nominate and appoint a fit person or persons to serve in such vacant office, until another shall be nominated by the Grand Jury, and appointed by the said Court of General Sessions, at their meeting next ensuing such vacancy."—Sec. 1, 1 P. L. 107.

[The foregoing remarks have been made applicable to all the other Town Officers who are appointed by these two Acts, that repetition may be avoided, by referring to this, when their Appointments are under consideration.]

The only qualification required by the Act of

1811 for any of those Offices, is, that the Grand Jury "nominate such number of fit and proper persons for each Township," as the Justices shall direct. There are, however, three qualities requisite to constitute a "*fit and proper person*" to execute the office of Constable, namely—honesty, knowledge, and ability ; honesty, to discharge the duties of his office truly and faithfully, without malice, affection, or partiality ; knowledge, to understand his duty ; and ability, to do it promptly and effectually.

Fire-Engine men are exempted, by the Acts relating to Firewards, &c. from serving as Constables "during their continuance in said office, and faithfully discharging the duties thereof."—1 P. L. 287.

II. THEIR DUTIES.

The office of Constable is said to be both judicial and ministerial ; judicial, as preservers of the peace at common law, or by virtue of particular statutes ; and ministerial, as in obeying the warrants and precepts of Justices, Coroners, Overseers, &c., and the charges of private individuals.—See 1 Burn's J. 792, 2 Term Rep. 406.

Their various duties as such officers will be considered in the following order :

1. TO BE SWORN INTO OFFICE.

The Act of 1765 directs that the Town Officers therein mentioned, "shall respectively be sworn to the faithful discharge of their duty in manner as is already prescribed by the Laws of this Province, and shall in every respect conform to the said laws." As Constables are among the number of such officers, it will be their duty, in the first place, after being duly notified of their appointment, if they intend to accept the office, to go without delay before some Justice of the Peace, and take the oath required.

2. TO PRESERVE THE PEACE.

Constables are considered by the common law as conservators of the peace, and not only empowered to part an affray, but are also bound to use their best endeavours to do so, and, if necessary, to demand the assistance of others.

If any man, therefore, shall make an affray, or an assault upon another, *in the presence of a Constable* ; or, shall threaten to kill, beat, or hurt another, the Constable may, without any warrant, take him into custody, and keep him till the affray is over, or carry him immediately before a Magistrate.

But a Constable is not authorised to lay hands on those who barely contend with hot words, without any threats of personal hurt ; and all that he can do in such case is to command them under pain of imprisonment to keep the peace.

If men be making an affray in a house, and the doors are shut, or if persons making an affray run into a house, the Constable may enter to preserve the peace ; and if manslaughter or bloodshed be likely to ensue, and entrance, upon demand, is refused, he may break open the doors to preserve the peace and prevent danger.

But a Constable has no power to arrest a man for an affray done out of his presence, without a warrant from a justice, unless a felony were done, or likely to be done ; for it is the proper business of a Constable to preserve the peace, and not to punish the breach of it.

If a Constable is preserving the peace, and any person stands in his way to prevent him, he is justified in taking such person into custody, though not in giving him a blow.

The authorities for the preceding points of law will be found in 1 Burn's Justice, 53, 54, 261, 262, 799.—1 Chitty Crim. Law, 20.—East Pleas of the Crown 303, 4, 57—and case there cited.

3. TO KEEP ORDER ON THE LORD'S DAY.

The Provincial statute of 1761, entitled " An Act for the better observation and keeping of the
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Lord's Day," (1 Geo. 3, c. 1, sec. 4, 1 P. L. 65.) enacts: "That the churchwardens and the Constables, or any one or more of them, shall once in the forenoon, and once in the afternoon, in the time of divine service, walk through the town to observe and suppress all disorders, and apprehend all offenders whatsoever, contrary to the true intent and meaning of this Act: and they are hereby authorised and empowered to enter any public house of entertainment, to search for any such offenders; and in case they are denied entrance, they are hereby empowered to break open, or cause to be broken open, any of the doors of the said house, and enter therein; and all persons whatsoever are strictly required and commanded to be aiding and assisting any constables or other officers in their execution of this Act, on the penalty of ten shillings current money for every neglect.—1 P. L. 65.

The offenders against this Act, alluded to in the foregoing section are: Persons selling any kind of goods on the Lord's Day ("except milk and fresh fish before the hour of nine of the clock in the morning, and five in the afternoon on the said day.") Sect. 1.—Persons doing any kind of work, business, or labour, on that day, or suffering their servants or children to do the same, (except works of necessity and charity,) or using any sport, game, or play on that day. Sec. 2.—Tavern keepers suffering any person (except strangers, lodgers or travellers) to remain in their houses drinking or idly spending their time, on that day; or not keeping their doors shut during the time of divine service.

and all persons found so improperly drinking or abiding in any public house.—Sec. 3. A constable may remove a person from church for disturbing the congregation in the time of divine service, although no part of such service was actually going on at the time; but he has no right to detain such person in custody afterwards for the purpose of taking him before a Magistrate.—1 Burn's J. 262.

4. TO ARREST CRIMINAL OFFENDERS.

1. *Without Warrant.*

In criminal cases, a person may be apprehended and restrained of his liberty, not only by process out of some Court, or warrant from a Justice, but frequently by Constables, and other officers, without any warrant or precept; and it seems, an arrest may be made without warrant, though there be no reason to suspect an escape.

A Constable has a more extensive power as to arresting persons than a private individual has; for the latter cannot of his own accord, without warrant, arrest a person, except upon his own suspicion, and not upon report and suspicion of another, and must in all cases when he arrests without warrant, be enabled to prove that a felony has been actually committed by some one. Whereas, a Constable may lawfully apprehend a supposed offender without warrant, upon a reasonable information and charge made by others; and although no felony has been committed.

In general, however, a Constable cannot any more than a private person, of his own accord, and without an express charge or warrant, justify the arrest of a supposed offender, upon suspicion of his guilt, unless that he can show that a felony was committed by some person, as well as the reasonableness of the suspicion that the party imprisoned is guilty.

Constables are not only authorised, but are also bound, upon a direct charge of a felony, and reasonable grounds of suspicion laid before them, to apprehend the party accused. And he alone who makes the charge will be answerable, if the person arrested is innocent.

When a Constable arrests without a warrant, by virtue of his office of Constable, he should notify that he is a Constable, or that he arrests in the King's name.

It is much the best, however, for Constables, in all cases not requiring immediate interference, to obtain a Magistrate's warrant before apprehending a party, for then they will be entitled to the benefit of the Act of 54 Geo. 3, c. 15, s. 7, which protects them when acting under a warrant, on granting a copy thereof when requested. (See their privileges.)

The positions of law contained in this section, have been carefully extracted from 1 Burn's J. 260 1, 2, 3;—5 ib. 995; 1 Chitty Crim. Law 20, 1, 2, 3; 1 East P. C. 300, and other law books.

2. *With Warrant.*

When a Warrant to apprehend an offender is directed and delivered to a Constable, he ought, with all speed and secrecy, to find out the party, and then to execute the warrant.

A warrant directed to several Constables, may be executed by any one of them.

When the Constable named in the warrant employs other persons to assist him, he must be so near as to be acting in the arrest, in order to render it legal.

The Constable to whom the warrant is directed, may execute it at any time while it is in force, and anywhere within the jurisdiction of the Magistrate granting or backing it. It continues in force until it is fully executed and obeyed, provided the Magistrate continues in the Commission. And a person may be twice apprehended under the same warrant, if the purposes of it have not been effected.

The directions of the warrant must be strictly observed, or else the Constable will not be justified in his acts, and may be treated as a trespasser; [as, if the warrant be to arrest A, and he arrests B.

If the Constable be sworn, and commonly known, and acting in his own precinct, he need not shew his warrant, but he ought to acquaint the party with the substance of it: and, if demanded, he ought to produce it, to leave a delinquent no excuse for resistance.

In no case is a Constable required to part with

the warrant out of his own possession; for that is his justification.

See 5 Burn's J. 993, 4;—1 Ch. Crim. Law 46 to 51;—1 East P. C. 320, and cases there recited, as authorities for the foregoing section.

3. *Time, place, and manner of making an arrest.*

Persons charged on a criminal account, may be arrested at any time, in the day or night, even on a Sunday, and in any place, and whoever they may be.

In making the arrest, the Constable should actually seize or touch the offenders' body, or otherwise restrain his liberty. The mere requiring the party to go before a Magistrate is no arrest or imprisonment; for bare words will not make an arrest without laying hold of the person, or without confining him. But if the Constable comes into a room, and tells a person he arrests him, and locks the door, this is an arrest, for he is in the custody of the Constable. 1 Burns J. 265, 1 Ch. C. L. 48.

Under this head will be considered 1st, Breaking open doors; 2ndly, Backing of Warrants.

BREAKING OPEN DOORS.—As to breaking open doors in order to apprehend offenders, it is to be observed, that the law never allows of such extremities but in cases of necessity; and therefore no one can justify breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance.

A Constable is by law authorized to break open doors, if the offender cannot otherwise be taken, under warrant for treason, felony, or actual breach of the peace, or to search for stolen goods. And if the Constable acts in obedience to the warrant, he will be justified, even though the party accused should prove his innocence; for in these cases the justice which is due to the public must supersede every pretence of private inconvenience.

In civil suits, the Constable is not authorised to break open an outer door or window, to execute the process; for every man's house is his castle for safety and repose for himself and family. But if a stranger take refuge in another man's house, it is not privileged, and may after demand of admittance and refusal, be broken open to execute either a civil or criminal process against him, for it is not *his* castle, and he cannot claim the benefit of sanctuary therein.

After a party has been actually arrested, and escapes from custody, any door may be broken open to retake him after proper demand of admittance.

And if the Constable, having entered a house to execute a Warrant, be locked in or otherwise prevented from returning, he may lawfully break open any of the doors or windows to regain his liberty.

—See 5 Burn's J. 995, 6, 7;—1 Chit. Crim. Law 51 to 59;—1 East P. C. 321.

BACKING OF WARRANTS.—The Warrant of a Magistrate cannot be executed out of his County, unless it be backed, that is endorsed, by a Magistrate of the County in which it is to be executed.

The practice of backing Warrants, in this Province, is sanctioned and regulated by the Act of 1814, 54 Geo. 3, c. 15. S. 8, 2 P.L. 122 which enacts : "That in case any person against whom a Warrant shall be issued by any Justice or Justices of the Peace, of any County, District or place, out of the jurisdiction of the Justice or Justices granting such Warrants as aforesaid, it shall and may be lawful for any Justice or Justices of the Peace of the County, District, or place, where such person shall escape, go into, be or reside ; and such Justice or Justices are, and are hereby required, upon proof being made upon oath, of the handwriting of the Justice or Justices, granting such Warrants, to endorse his or their name or names on such Warrant, which shall be a sufficient authority to the person or persons bringing such Warrant, and to all other persons to whom such Warrant was originally directed, to execute such Warrant in such other County, District or place, out of the jurisdiction of the Justice or Justices granting such Warrant as aforesaid, and to apprehend and carry such offender or offenders before the Justice who endorsed the Warrant, or some other Justice or Justices of such other County, District, or place, where such Warrant was endorsed." If the offence be bailable, the Justice endorsing the Warrant is directed by the same Section of the Act to bail the party and deliver the recognizance, examination or confession, and all other proceedings, to the Constable or other person apprehending the offender, who is thereby required "to receive and

deliver over such recognizance, examination, and other proceedings to the clerk of the Supreme Court, or Clerk of the Peace of the County or District where such offender or offenders is, or are, required to appear by virtue of such recognizance:" (See penalty for neglect,) and if the offence be not bailable, or sufficient bail be not found, "then, and in that case, the Constable, or other officer or person, so apprehending such offender or offenders, shall carry and convey such offenders before any one of His Majesty's Justices of the Peace of the proper County, District, or place, where such offence was committed, there to be dealt with according to law."

There appears to be an omission of some words in the first part of this Section, which renders the meaning rather obscure, and which, if supplied, would make it read thus: "That in case any person against whom a Warrant shall be issued by any Justice or Justices of the Peace, of any County, District or Place, *shall escape, go into, be, or reside, in any other County, District, or Place,* out of the jurisdiction of the Justice or Justices granting such Warrant as aforesaid, it shall and may be lawful," &c. The English Act, 24 Geo. 2, c. 55, sec. 1, from which this section of our Act has been copied, with such alterations as were necessary to make it applicable to this Province, has words similar to those supplied in italics, and the omission (if it be one) may inadvertently have been made when the Section was copied, engrossed, or printed. If so it might easily be amended by the Legislature.

The intent and meaning of the Sec. however, as far as concerns the Constable, is, that when he has a Warrant against a person who has escaped, gone into, or resides, in a County out of the jurisdiction of the Magistrate who granted it, and wishes to arrest him there, he must take the Warrant to some Magistrate of that County, and get it endorsed, or backed before he makes the arrest; and then he must take the prisoner before the Magistrate who endorsed the warrant, or some other Magistrate of that county. If the prisoner is discharged on bail, the Constable must take and deliver the recognizance and other papers to the Clerk, as already mentioned; if not, he must take him before some Magistrate of the County where the offence was committed.

4. What to be done after the arrest.

When the Constable has made his arrest, he must, as soon as possible, bring the person to the Justice or to gaol, according as the Warrant directs; and if he be guilty of any unnecessary delay, it is a breach of duty.

If the Warrant be to bring the party before the Justice who issued it, then the Constable is bound to bring him before the same Justice; but if it be to bring him before any Justice of the County, then it is in the election of the Constable to bring him before what Justice he thinks fit, and not as the prisoner pleases.

If the time be unseasonable, as in or near the night, or if there be danger of a rescue, or if the

person be sick, the Constable may detain him, till the next day, or such time as it may be reasonable to bring him before the Justice.

When the prisoner is brought before the Justice, he is still considered to be in the custody of the Constable, until he has been discharged, bailed, or committed to prison.

If any one espouses the prisoner's cause, and encourages him to resist, the Constable may imprison such person thus opposing the operation of justice.

When an arrest has been made without a Warrant, the Constable may, in some cases, take the party's word for his appearance before a Magistrate: and this is frequently done when the charge is of a trifling nature, and the person is of good repute, and there is no probability of his absconding. But, if the Constable, after having arrested a party, under a Warrant, suffer him to go at large, upon his promise to come again and find sureties, it is doubtful whether he can afterwards arrest him by force of the same Warrant. But if the prisoner escapes without the concurrence of the Constable, he may be retaken as often as he escapes, although he were out of view and had reached another county.

The Constable is not obliged to return the Warrant itself, for that is his justification; but he ought to certify what he has done upon it.

See 5 Burn's J. 997: 1 Ch. Crim. Law 59, and cases there cited.

5. TO EXECUTE SEARCH WARRANTS.

The Justices of the Peace, by virtue of their office, and, in some cases, by express Statutes, when complaint is made before them upon oath, are authorised to issue Warrants for searching houses or places, in which there is reason to suspect that stolen goods are concealed, or certain offenders, such as deserters, disorderly persons, &c. are harboured.

These Warrants, when directed to them by the Justices, the Constables are bound to execute, according to the instructions they contain; and if they act strictly in obedience to the Warrants, they will be protected by the Statute. (See their privileges.)

A general Warrant to search in all suspected places is not legal. But in the case of a complaint and *oath* made of goods stolen, and that the party suspects that the goods are in such a house or place, *and shows the cause of his suspicion*, the Justice may grant a Warrant to search the house or place suspected, to attach the goods, and the party in whose custody they are found, and to bring them before him or some other Justice of the Peace, to be dealt with according to law. The Warrant should direct the search to be made in the day time, but it appears that in case of positive proof, it may be executed in the night time, particularly if there is reason to fear that the goods or offenders will be gone before morning.

With respect to the mode of executing these Warrants, if the doors be shut, and, upon dema.

not opened, they may be broken open ; and so may boxes, after the keys have been demanded ; and although the goods be not found, the Constable will be excused, if he strictly observes the directions of the Warrant. In making the search, he ought to be accompanied by the party making the complaint, who will be better able to identify the property lost, or the person suspected.

See 5 Burn's J. 354: 1 Ch. Crim. Law, 56, 64: 1 P. L. 14, 186, 446.

6. TO EXECUTE ALL OTHER WARRANTS OF THE JUSTICES.

Our Provincial Legislature, in order to further the ends of justice—to maintain the good order of society—and to promote the prosperity of the Province, has found it necessary, in a great variety of instances to enact Laws, requiring some things to be done, and forbidding others, and to enforce obedience to them by imposing fines upon offenders. These fines are in most cases to be recovered before Justices of the Peace, who are authorized, on conviction of an offender, and failure in payment of the penalty prescribed, to issue their Warrant for levying the amount by distress and sale of his goods and chattels, and for want of these, by their Warrant, to commit him to prison, &c. Now although the Statutes seldom say to whom such Warrants are to be directed, or by whom executed, the Constables are nevertheless the proper officers for that purpose, and bound to obey these and all

other lawful Warrants, directed to them by the Justices; which if they refuse or neglect to do, they may be fined as in other cases of neglect of duty.

7. TO EXECUTE THE WARRANTS AND PRECEPTS
OF OTHER OFFICERS.

The Constables are required by different Acts of the Province, to execute the Warrants and Precepts of certain other Officers; which upon receiving, they are bound to obey, and are liable to be fined for neglect or refusal.

1. Of Coroners.
2. Of Overseers of the Poor.
3. Of Surveyors of Highways.
4. Of Commissioners of Streets.
5. Of Firewards.

1. *Of Coroners.*

The Act of 1828 relating to Coroners (9 Geo. 4, c. 16, sec. 3, 4 P. L. 32,) authorises the Coroner of any County or District, to make out and deliver to some Constable of the County, Town, or place, wherein such Coroner has jurisdiction, a Warrant or Precept, commanding him to summon a jury to attend any Inquest by Law necessary to be held on any person deceased.

The 4th sec. makes it lawful to hold such Inquests on Sunday.

2. *Of Overseers of the Poor.*

The Act of 1823, relating to the support of the Poor (4 Geo. 4 c. 6, sec. 5, 3 P. L. 150) authorises the Overseers, at least twenty days before the times appointed for the Meetings of the Freeholders to make provision for the support of the Poor, to issue their Precepts to the Constables of the several Townships and Settlements, requiring them to notify the inhabitants thereof to meet at the time and place appointed, for that purpose; and the first Sec. directs the Constables, upon such Precepts being directed to them, to give notice at least ten days before the time appointed for the meeting.

3. *Of Surveyors of Highways.*

The Act of 1826, relating to Highways, Roads, and Bridges, 7 Geo. 4, c. 2, sec. 5, 3 P. L. 231, enacts, "That the Constables for the several Townships in this Province, shall make out lists of all such persons who are owners of teams, carts, or trucks, as also of every other householder, and other persons liable to perform labour, under this Act, within their respective Townships, and the settlements adjoining, and deliver the same to the Surveyors of Highways; and the said Constables, when required by the said Surveyors, shall summon the said persons contained in the said lists to meet on such days, and at such places, as the said Surveyors shall direct, to perform the labour required by this Act."

The 6th sec. requires that the person to be so summoned, have "at least six days' notice of the time and place where they are to be employed."

4. *Of Commissioners of Streets.*

The Act of 1826, relating to Commissioners of Streets, (7 Geo. 4, c. 3, sec. 12, 3 P. L. 240) requires the Constables for the several Towns and places where Commissioners of Streets have been appointed, * to make out and deliver to them lists of all persons owning horses, teams, carts or trucks, and of all other persons liable to perform labour under this act within the District of the said Commissioners, and deliver the same to them; and when required by them "to summon the persons contained in such lists, to meet on such days, and at such places, as the said Commissioners shall direct, to perform the labour required by this Act."

The 13th sec. of this Act also requires six days' notice to be given.

* Commissioners of Streets are appointed in Halifax, Annapolis, Windsor, Liverpool, Lunenburg and Pictou, by the Act of 1826, 7 Geo. 4, c. 3, 3 P. L. 237,

In Bridgetown	"	1827, 8	"	28, 4	"	18
Dartmouth	"	1828, 9	"	27,	"	40
Digby	"	1829, 10	"	24,	"	49
Dorchester	"	"	"	47,	"	71
Falmouth	"	1832, 2 Wm. 4,	c. 86,	"	"	160
Chester	"	1833, 3	"	6,	"	195
Guysboro'	"	"	"	34,	"	212
N. Sydney	"	1834, 4	"	64,	"	337
N. Glasgow	"	"	"	72,	"	349

5. *Of Firewards.*

The Act of 1782 relating to Firewards (22 Geo. 3, c. 4, sec. 4, 1 P. L. 228) enacts—"That the Constables of each ward" (in those towns to which the Acts relating to Firewards have been extended*) "shall attend with their staves on the Fireward of such ward, at times of fire, to receive his directions, and to assist him in keeping good order and prevent thefts."

8. TO APPREHEND IDLE AND DISORDERLY PERSONS.

The Act of 1774 for punishing Rogues, Vagabonds, and other Idle and Disorderly Persons, (14 & 15 Geo. 3, c. 5, sec. 3—1 P. L. 186) enacts "That it shall be lawful for any person to apprehend offenders against this Act,"—"and in case any Constable or other such officer, refuse or ne-

* The Acts for appointing Firewards, &c. have been extended

To Shelburne in 1790 by 30 Geo. 3, c. 1, 1 P. L. 277
To Windsor, Annapolis, and Lunenburg in 1793 by 33 Geo. 3, c. 7, 1 P. L. 318,

To Liverpool in 1801 by 40 Geo. 3, c. 1, 1 P. L. 435,
Dartmouth, in 1820 by 60 " c. 7, 3 P. L. 67,
Yarmouth in 1822 by 3 Geo. 4, c. 4, " 122,
Pictou in 1823, by 4 Geo. 4, c. 24 " 167,
Chester in 1832, by 2 Wm. 4, c. 46, 4 P. L. 167,
Sydney, C. B. in 1833, by 3 Wm. 4, c. 36 " 236,
Bridgetown and Digby in 1834, 5, by 5 Wm. 4, c. 49, 4 P. L. 434.

glect to use his best endeavours to apprehend or convey to some Justice any such offender, it shall be deemed a neglect of duty, and he shall be punished as hereinafter directed." (See their Liabilities.)

The persons who are declared to be offenders against this Act, are : *Sec. 1.* Deserters from the Army and Navy, and all idle and wandering persons without a pass from some Justice of the Peace.

Sec. 2. All persons running away and leaving their wives or children upon any Township ; all persons unlawfully returning, without a certificate, to any Township from which they have been removed by a Justice's order ; all persons who, not having wherewith to maintain themselves, live idle, and refuse to work for the usual wages ; and all persons going about to beg alms.

9. TO ASSIST LANDLORDS IN SELLING GOODS DISTRAINED FOR RENT.

When the goods of a tenant have been distrained for rent due, and are not replevied within five days next after such distress, and regular notice thereof, they may be appraised and sold by the person distraining, towards satisfaction of the rent, and charges ; and the Sheriff, or his Deputy, or the Constable of the town, is, by the Act of 1768 (8 Geo. 3, c. 4, sec. 1, 1 P. L. 137) " required to be aiding and assisting therein." It will therefore be the duty of any Constable, when so desired, to aid and assist in such cases.

As Constables are sometimes also employed by

the landlord to distrain the goods of his tenant for rent in arrear, (although it does not appear that it is their *duty* to do so), it may be necessary to lay down a few rules for their guidance in making, as well as selling such distress.

1. They ought always to have a Warrant in writing, from the landlord, though it may be by parol; and if there are more persons than one entitled to distrain, the authority should be given by them all.

2. All personal property found on the premises, whether it belongs to the tenant or another person, is in general liable to be distrained, unless particularly exempted: as for instance:—

3. Whatever is in a man's present use or occupation, is for that time privileged from distress; as a horse on which he is riding, or an axe, &c. with which he is working. Things delivered to persons exercising their trade are also exempted; as cloth left in a tailor's shop, &c. So are things annexed to the freehold; as furnaces, the doors or windows of a house, &c. And so are goods in the custody of the law; as those levied on under an execution. See 1 Burn's J. 974, 4 Term Rep. 565.

5. The Statute makes it lawful to distrain "sheaves or cocks of corn, or corn loose, or in the straw, or hay lying or being in any barn, or upon any hovel, stack, or rick, or otherwise upon any part of the land or ground charged with such rent." Sec. 2. And also any cattle or stock of the tenant feeding or pasturing on any common belonging to the premises; and also all corn and grass, hops,

roots, fruits, pulse or other products growing on the premises. Sec. 11.

6. A distress for rent must be made in the day time.

7. If the tenant fraudulently or clandestinely remove *his* goods from the demised premises, for the purpose of preventing them from being distrained for rent, they may be taken within twenty-one days after, wherever they may be found; and disposed of, the same as if they had been found on the premises. Sec. 6. But if the goods have been sold in the mean time *bona fide*, and for a valuable consideration, they cannot be taken for rent. Sec. 7.

8. It is not lawful to break open gates or inclosures, or doors, to make a distress. But if the outer door of a house is open, an inner door may be broken open for that purpose. 1 Burn's J. 987.

9. The distress must be reasonable, and not too great; for, if it be unreasonable, all the parties concerned in taking it, will be liable to an action.—*Ib.*

10. After taking the distress, it is necessary to give the tenant or owner of the goods, notice of the distress, with the cause of such taking, and inform him that unless the rent and costs be paid in five days, the goods will be sold.—The notice must be left at the chief mansion house, or other most notorious place on the premises. Sect. 1.

11. After the expiration of five days, exclusive of the day of taking, if the tenant has not replevied the goods or paid the rent and charges, they must be appraised by two sworn appraisers, (to

be sworn by a Magistrate or the Sheriff), and then "sold for the best price that can be gotten for the same." If they sell for more than the rent and charges of distress, appraisement and sale, the overplus must be given to the owner. Sec. 1.

12. The sale need not be by Auction, though it is usually so. The landlord, and in general, any person, may be a purchaser. 1 Burn's J. 994.

10. TO SERVE AND EXECUTE PROCESS IN CIVIL SUITS.

The Statutes of the Province relative to the summary trials of actions, require that all Writs of Summons, Capias and Execution, issued by the Justices of the Peace, shall be directed to either of the Constables for the County or District where such Justices shall reside: That the Summons and Capias shall be served on the Defendant, at least three days previous to the day on which they shall be made returnable: And that the Execution shall be returnable in twenty days from the day on which it shall be issued. (See 1 P. L. 281, 3 ib. 234.

1. *Of the Summons.*

When a Constable has a Summons against a party, and is not able to make a personal service, he must leave a Copy of it at the Defendant's house, or last place of abode, with some person residing there, and, if required, must make oath of such service. 1 P. L. 281.

2. *Of the Capias and Execution.*

When a Constable is commanded by virtue of a *Capias* or *Execution* to take the Defendant, in a civil suit, he must watch his opportunity to arrest him; for no man can be arrested, in civil suits, in his own house, if the *outer* doors be fastened. And, if the Constable, after request to open the door, and denial, forcibly break it open, he will be a trespasser. For every man's house is considered by the law to be his castle of defence and asylum, wherein he should suffer no violence. But the privilege of a man's house only extends to himself and his family, and does not protect any other person who escapes thither, nor the goods of another conveyed there, to prevent any lawful execution, or to escape the ordinary process of the law. If a Constable, therefore, has a *Capias* or *Execution* against a person, who is sheltered in another man's house, or has goods concealed there, and wishes to take either, he may, after demand of admittance and refusal, break open the doors, and execute the process, without being liable to an action. But it will be at the peril of the Constable, that such party or property be found there; for otherwise he will be liable as a trespasser.

When the Constable has gained peaceable entrance at the outer door, he may break open an inner door or window, to take the defendant or a lodger, after a previous demand of admittance and refusal. But if the whole house be let in lodgings then each lodging is considered a dwelling

house; and the door of each, an outer door, which it is not lawful to break open to make an arrest in civil suits. If the defendant has been legally arrested, and makes his escape, the Constable may break open an outer door to retake him.

Parties to a cause, witnesses, bail, and all persons who have any relation to a suit, are exempt from arrest while attending court, and also in going and returning; provided they are guilty of no unnecessary deviation or delay. In all cases of arrest, if the Writ is demanded, it ought to be produced.

[See Tidd's Practice—title Execution; 2 Pet. Abr. 300, 333: 3 Black Com. 288, notes and cases there cited; as authorities for the preceding points of law under this heading.]

The Prov. Act of 1791 (31 Geo. 3, 1 P. L. 284) makes it illegal to execute any process or order, judgment or decree, on the Lord's Day, (except in cases of treason, felony, or breach of the peace); and makes any person so serving or executing the same, liable to an action at the suit of the party grieved.

When Constables have arrested a prisoner on a *Capias*, they are bound to let him go at large, if he gives sufficient bail for his appearance. But if he cannot find bail, or pay the debt, they must keep him in custody, so that they have him before the Justices, at the time and place mentioned in the Writ.

When they have taken a Defendant under an *Execution*, and he does not satisfy the Plaintiff,

they must commit him to such Jail as the Writ directs. But they are not authorised to take the *body*, if they can find sufficient personal property actually belonging to the Defendant, to satisfy the Debt and Costs. For, the Writ *commands* them, in the first place, to levy the amount by sale of his goods and chattels; "and for want thereof to take the body.

In making such levy and sale, the Constables ought to be guided by the following Rules :

1. It is not lawful to take in Execution, the necessary wearing apparel of the Defendant, or his children; or his Tools or Implements of trade; or his Cow, if he has not more than one. 3 P. L. 21.

2. It is not lawful to take any goods in Execution, that are in or upon any house or lands leased, until the Landlord, (if he demand it) is paid the rent due him for the premises; or one year's rent *only*, if more than that is due. But after the rent has been paid to the Landlord, such goods may be levied and sold, as well for the money so paid, as for the amount of the Execution. 1 P. L. 137.

3. It is not lawful to take in Execution, the "grain, hay, potatoes, or other articles, growing in the ground, before the same shall be severed from the ground." 3 P. L. 182.

4. It is not lawful to take any goods in Execution, that have been distrained for rent, or levied on by any previous process, or otherwise in the custody

of the Law. (See Tidd's Practice—title Execution.)

5. It is lawful to take any goods in Execution that have been fraudulently sold, or conveyed away, by the Defendant; and a principal badge or mark of fraud, is his remaining in possession after the sale. For, if a man sell goods, and still continue in possession, as visible owner of them, such sale is fraudulent, and void as against creditors.—But if the Defendant sell his goods *bonâ fide*, and for a valuable consideration, before the delivery of the Writ to the Sheriff, (or a Constable), they cannot be taken in Execution; and though he sell them fraudulently, yet if they be afterwards sold to another, *bonâ fide*, they are not liable to be taken in the hands of the second purchaser. (See Tidd, ib.)

6. It is lawful to enter the Defendant's house, if the *outer* door is open, and take his goods in Execution. And if *his* goods are in the house of another person, who refuses to deliver them up, or to give admittance, when requested, it is lawful to break open the door and enter the house of such person so refusing. Tidd, ib.

7. The goods, after being advertised, must be sold by public auction, for the highest price they will bring, and the overplus, (if any), given to the Defendant.

8. The Execution must be returned "in twenty days from the day on which it shall be issued." It may be executed at any time within that period;

or even on the day it is returnable. (Tidd.) But it must not be executed on a Sunday. 1 P. L. 284. If two Executions against the same person are delivered to a Constable, he ought to execute that first which was first delivered. 9 Pet. Abr. 269.

In case of doubt, difficulty, or dispute, respecting the right to seize goods, break open doors, &c. the Constable should take legal advice, or be indemnified by the Plaintiff.

11. TO ATTEND THE COURTS.

The last duty of Constables, to be here noticed, consists in attending the different Courts of justice, and the Sessions of the Peace, to execute the orders of the Court, and to assist the Sheriff in the performance of his duty ; such as in keeping silence and decorum, taking charge of prisoners, &c.—The Sheriff generally summons such number to attend, as he thinks necessary for the above purposes ; and they are liable to a fine for every day's non-attendance, or for neglect of duty when present. (See their Liabilities. p. 47)

III. THEIR LIABILITIES.

1. FOR REFUSING TO ACCEPT THE OFFICE.

Constables are, in the first place, liable to a fine of forty shillings if they refuse to accept the office when duly appointed. To be recovered before any two Justices, and levied by Warrant of distress. To be applied to the use of the Poor of the Township. 1 P. L. 107.

2. FOR NEGLECT OF DUTY OR MISBEHAVIOUR IN OFFICE.

Constables "being guilty of any neglect, or misbehaviour, in the execution of the duty of their respective offices," shall forfeit and pay the sum of forty shillings. Recovered and applied as the preceding.—ib.

3. FOR NEGLECT AT THE TIME OF FIRES.

The Constables of those towns to which the Acts relating to Firewards have been extended,* are liable to be fined from 5 to 20 shillings for neglecting to attend, or not doing their duty, or not obeying the Firewards, at the times of fire, or a

* See Note, p. 33.

larm of fire, or for neglecting, when called upon by the Justices after a Fire, to produce a certificate from one or more Firewards, that they duly attended and did their duty at such Fire, or shew a good excuse for not attending. Recovered before any one Justice of the Peace. (See 2 P. L. 91 : 52 Geo. 3, c. 13, sec. 5.

The Act directs the Clerk of the Peace from time to time to notify the Constables of their duty in this respect, by reading to them that clause in which it is contained.—ib.

4. FOR NEGLECTING TO RETURN RECOGNIZANCES, &c.

The Act of 1814 (54 Geo. 3, c. 15, sec. 8 : 2 P. L. 123) after directing the manner of backing Warrants, as before mentioned (p. 24,) enacts—
“And if such Constable, or other person to whom such Recognizances, Examination or Proceedings, shall be delivered as aforesaid, shall neglect or refuse to deliver over the same to the Clerk of the Supreme Court, or Clerk of the Peace of the County or District where such offender or offenders is or are required to appear by virtue of such Recognizance, such Constable, or other person, shall forfeit the sum of Ten Pounds ; to be recovered against him by Bill, Complaint, or Information, in the Supreme Court.”

5. FOR NEGLECTING TO APPREHEND OFFENDERS.

The Act of 1774 (14 & 15 Geo. 3, c. 5, 1 P. L. 186) for punishing Rogues, Vagabonds, and other Idle and Disorderly Persons, enacts, Section 3—"And in case any Constable, or other such officer, refuse or neglect to use his best endeavours to apprehend or convey to some Justice, any such offender, it shall be deemed a neglect of duty, and he shall be punished as hereinafter directed;" and then Section 5 enacts—"That if any Constable be negligent of his duty in the execution of this Act, he shall forfeit any sum not exceeding five Pounds, nor less than ten Shillings. To be recovered before one Justice, and levied by Warrant of distress; and if sufficient distress cannot be found, the Justice may commit the person so offending to prison, or the house of correction, there to be kept to hard labour for any time not exceeding two months.*"

6. FOR TAKING ILLEGAL FEES.

The Act of 1787, (28 Geo. 3, c. 15, sec. 6, 1 P. L. 264,) for the establishment of Fees, imposes a penalty of ten Pounds on any officer, who shall exact or take any greater or other fees for their services, than are ascertained or allowed by this Act. "To be recovered by action of debt, bill,

* See p. 34 for what persons are to be deemed offenders against this Act

plaint, or information, in any Court of Record in this Province, with full costs of suit ; and the party so offending, shall further pay double the amount of the excessive fees taken, to the party aggrieved." One half of the £10 to go to the King, the other half to the prosecutor. (See their Privileges.)

7. IN EXECUTING PROCESS IN CIVIL SUITS.

When Constables have a Capias against a person, and do not take him, if they have an opportunity ; or, having arrested, let him go at large without taking bail, or having the plaintiff's consent ; or allow him to escape, or be rescued ; unless they have him at the return of the Writ, *they will be liable to the Plaintiff for the debt.* And when they have an Execution and do not take the Defendant, if they have had an opportunity, before the return of the Writ, or if they let him go at large without the Plaintiff's consent, or escape or be rescued before he is committed to prison, they will be likewise liable.

If they have an Execution against A, and take B—or if they make an arrest out of their jurisdiction—or after the return-day of the Writ—or on a Sunday—or unlawfully break open doors—they will be liable to an action of trespass. And if they take goods not belonging to the Defendant—or exempted by Law from Execution—or if they are guilty of any abuse or excess in executing the process, they will be liable to an action of trespass

at the suit of the party injured. (See their Duties, p. 37 to 42; and authorities there cited.

7. FOR NOT ASSISTING TO REMOVE EEL-
POTS, &c.

The Act of 1829, relative to Eel Fisheries, (10 Geo. 4, c. 40, sec. 2, 4 P. L. 66, enacts—That all persons may require the aid and assistance of a Constable, or the Overseer of the River fisheries, for the purpose of taking and removing any hedge wear, fish-garth, net, seine, eel-pot, or other incumbrance, found, between the first day of May and the twentieth day of June, in or across any river, brook, stream, or other place within the Province; “and upon the neglect or refusal of such Constable or Overseer, being previously so required, he or they may be prosecuted at the next General Sessions of the Peace, by information or indictment, and if thereupon convicted, shall be fined by the Court as in other cases of neglect of duty.”

8. FOR NOT ATTENDING COURTS, &c.

As has already been observed, (p. 42,) it is the duty of Constables to attend the different Courts of Justice and Sessions of the Peace, when summoned by the Sheriff; and they are liable to be fined, at the discretion of the Court, for every day they refuse or neglect to attend, unless they can shew

a sufficient excuse for being absent. And if they are guilty of any neglect or misbehaviour in the execution of their duty, while in attendance, they may be fined in the same manner, and even imprisoned.

IV. THEIR PRIVILEGES.

1. PROTECTION FROM VEXATIOUS SUITS.

By the common law, an officer who merely executed a Warrant, was answerable for the consequences, if the Magistrate who issued it, acted without authority. Constables were consequently exposed to vexatious actions in discharging those very duties for neglect of which they might otherwise be punished. But they are now protected in this Province, when acting in obedience to Justices' Warrants, by the Act of 1814, 54 Geo. 3, c. 15, sec. 7, 2 P. L. 122, which enacts—"That no action, shall be brought against any Constable or other officer, or against any person or persons acting by his order, and in his aid, for any thing done by him in obedience to any Warrant under the hand and seal of any Justice of the Peace, until demand has been made and left at the usual place of his abode by the party or parties intending to bring such action, or by his, her, or their attorney, in writing, signed by the party demanding the

same, of the perusal and copy of such Warrant and the same has been refused for six days after such demand, and if after such demand, and compliance therewith, by shewing the said Warrant to, and permitting a copy thereof to be taken by, the party demanding the same, any action shall be brought against such Constable or other officer, or against such person acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said Warrant, defendant or defendants, that on producing or proving such Warrant, at the trial of such action, the Jury shall give their verdict for the defendant or defendants notwithstanding any defect of jurisdiction in such Justice or Justices: and if such action be brought jointly against such Justice or Justices, and the Constable or other officer, or persons acting in his or their aid, as aforesaid, then on proof of such Warrant, the Jury shall find for such Constable, or other officer, and persons so acting as aforesaid, notwithstanding such defect of jurisdiction, and if the verdict shall be given against the Justice or Justices, the plaintiffs shall recover costs of suit against him or them, to be taxed by the Court, so as to include the costs which the plaintiff or plaintiffs are liable to pay to the other defendant or defendants for whom such verdict shall be found as aforesaid.”*

* This Section is inserted at full length that it may be referred to when considering the Privileges of other Town Officers within the protection of the Act.

The 10th Section of the same Act directs—
“That no action shall hereafter be brought against any Constable or other officer, or person acting as aforesaid, unless such action shall be commenced within six calendar months, after the act complained of shall have been committed.”

The Legislature intended by the 7th Section of the Act to prevent the Constable or other officer, when acting in *obedience* to the Warrant, from being answerable on account of any defect of jurisdiction in the Justice, and to afford him an absolute protection at whatever period of time the action might be brought against him; and by the 10th Section to make him free from any legal liability, after the lapse of six calendar months, where he has acted not in obedience to his Warrant, but *bonâ fide*, and in *supposed* obedience thereto. (See 1 Burns' J. 803.)

When the Constable has done an act in *obedience* to the Warrant of a Magistrate, *he* cannot be sued, but only the Magistrate who has exceeded his jurisdiction, provided the Constable give a copy of his Warrant after the demand, in pursuance of the Act. But the Constable is not protected from an illegal act if he had no Warrant at all; or if he acted beyond its authority, in which cases, no demand of a copy of the Warrant is necessary.—*ib.* 804.

Therefore, if a Constable has a Warrant to take the goods of A. and he takes the goods of B: or if he take a person's goods, or break open a house not mentioned in a search Warrant, which he is

executing, he will be liable to an action of trespass, without any demand of the Warrant.

But in those cases where he is liable, the action must be commenced, within six months after the act complained of shall have been committed. Sec. 10.

If the Constable deliver a copy of his Warrant before the commencement of the action, although after the expiration of six days from the demand, it is sufficient. 5 East Rep. 445.

The Constable need not return his Warrant to the Justice, nor ought he to part with it out of his own possession, for that is his justification. If a copy of it is demanded, he should either make a copy himself, or allow the party applying to take one. The 7th Section of the Act points out the mode in which the demand should be made.—The signature of the Attorney to the demand, on behalf of the party applying, is sufficient. 1 Burn's J. 805.

By the Act of 1829, 10 Geo. 4. c. 44, 4 P. L. 69, if an action is brought against a Constable or any other person, for, or on account of, any thing done under or by virtue of any Provincial Statute, or any English Statute in force in this Province, he or they may plead the general issue, or any brief plea, and give the special matter in evidence, the same as if it had been specially pleaded.

2. FEES AND ALLOWANCES FOR SERVICES.

1. *In Civil Suits.*

The Act of 1787, (28 Geo. 3, c. 15, 1 P. L. 263, (for the establishment of Fees, allows and establishes the fees of Constables as follows :

Attending a Jury in each cause, 1s.

Serving every Warrant or Summons, 1s.

Summoning a Jury by warrant from Coroner, and attendance per day, * 2s. 6d.

Travelling, per mile, 3d.

The Act of 1822 (3 Geo. 4, c. 3, 3 P. L. 135) for the Summary Trial of Actions, directs that the Constables' Fees to be taken and received in all Causes before Justices of the Peace, shall be as follows :

Service, 1s.

Travel, 3d. per Mile.

2. *In Criminal Cases.*

The Act of 1768, 8 & 9 Geo. 3, c. 2, sec. 1, 1 P. L. 147, directs, that persons who shall be committed to Gaol by any Justice of the Peace, for any offence or misdemeanour, having means or ability, "shall bear their own reasonable charges for so conveying or sending them to the said Gaol." And if any such persons shall refuse to defray the

* See also Act of 1828, 9 Geo. 4, c. 16, sec. 2, 4 P. L. 32.

said charges, the Justice shall grant a Warrant to sell so much of the goods and chattels of the said persons as shall satisfy and pay the same.

The second Section enacts—"That if the said person or persons so to be committed as aforesaid, shall not have or be known to have, any goods or chattels which may be sold for the purpose aforesaid, within the county, town, or place, that then the said Justice or Justices, on application by any Constable or other officer who so conveyed such persons to Gaol, shall, upon oath, examine into and ascertain the reasonable expenses to be allowed such Constable or other officer, and shall forthwith, without fee or reward, by Warrant under his or their hand and seal, or hands and seals, order the Treasurer of the County to pay the same, which the said Treasurer is hereby required to do as soon as he receives such Warrant; and any sum so paid shall be allowed in his accounts."

The fourth Section provides that when no County Treasurer shall have been chosen, or the Treasurer shall not have any money in his hands to pay the sum so ordered, then "the same shall be paid out of the public Treasury of the Province."

One of the purposes mentioned in the Act relating to County Rates, for which money is to be raised by presentment of the Grand Jury, at the General Sessions of the Peace, is, "to pay any allowance which may be made by the said Court of Sessions of the Peace, held in and for any such County or District, to any Constables for extraordinary expenses incurred in the execution of their

duty, in cases of Riot or Felony." 5 Wm. 4, c. 13, sec. 2, 4 P. L. 385.

3. REWARD FOR APPREHENDING OFFENDERS.

The Act of 1774, (14 & 15 Geo. 3, c. 5, 1 P. L. 186) "for punishing Rogues, Vagabonds, and other Idle and Disorderly Persons," after declaring who are to be deemed such offenders, and authorising Constables and other persons to apprehend and carry them before a Justice of the Peace; (See pages 33, 34) directs that if any Constable or other person so apprehend and convey any such offender, "it shall be lawful for such Justices to reward any such Constable, or other person, by making an order under his hand and seal on the Treasurer of the County, to pay ten shillings to the person so apprehending him, on producing such order, and giving a receipt."

SPECIAL CONSTABLES.

Justices of the Peace, it appears, are authorised, in cases of necessity, to appoint and swear in persons to act as Special Constables, for such time and in such manner as the Justices shall deem

fit and necessary, for the preservation of the public peace, and for the suppression or prevention of any riot, felony, or misdemeanour. Such persons, when so appointed for those purposes, are bound to serve, and are, for the time, vested with all the powers and privileges pertaining to the office of Constable.

The English Statute 1 Geo. 4, c. 37, reciting that doubts had arisen whether any person could be compelled to act as a Special Constable, except in any *actual* tumult, riot, or felony; authorises two or more Justices of the Peace, by the information (on oath) of five respectable householders, to appoint Special Constables when any tumult, riot, or felony, has taken place, *or is likely to take place, and may be reasonably apprehended*; and imposes a penalty for neglect or refusal. Although this statute, it seems, is not in force in this Province, and the appointment of Special Constables is not provided for by any Provincial Act, the Magistrates always exercise the privilege of appointing them, in cases of necessity. And, it is presumed, they are authorised to do so, by virtue of their office, as conservators of the Peace.

One of the purposes mentioned in the Act relating to County Rates, for which money is to be raised by the presentment of the Grand Jury, at the General Sessions of the Peace, is, "to pay any allowance which may be ordered by the said Court of Sessions to be made to any Special Constable or Constables, for his or their expenses, trouble, and loss of time, in executing or endeavouring to

execute any Warrant or Warrants which such Constable or Constables have or hath been appointed to execute, or to assist in executing, in any case of Felony or Misdemeanour." 5 Wm. 4, c. 13, sec. 2, 4 P. L. 386. This clause of the Act, in providing for the expenses of special Constables, recognizes the right of Magistrates to appoint them, when necessary, for the purpose of executing their Warrants.

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CHAPTER II.

OVERSEERS OF THE POOR.

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CHAPTER II.

OVERSEERS OF THE POOR.

I. THEIR APPOINTMENT.

The Overseers of the Poor, (who are also Surveyors of Township lines and bounds,) are appointed annually, by the Grand Jury and the Court of Sessions; at such Term as the Justices of the Court shall direct,* and in such number as *they* may deem expedient.

The Act of 1823, 4 Geo. 4, c. 6. sec. 5, 3 P. L. 150, enacts—"That the Overseers of the Poor throughout the Province, (the Township of Halifax excepted) shall continue to be nominated, recommended, and appointed, in the manner now by Law provided and directed;"—that is, according to the regulations contained in the Acts 5 Geo. 3, c. 1, 1 P. L. 106, and 51 Geo. 3, c. 24, 2. P. L. 79 "for the choice of Town Officers." These Acts have been already explained, in considering

* Except in the Township of Pictou.

the appointment of Constables, c. 1. p. 13, 14—where they may be referred to for further particulars.

[The Overseers for the Township of Pictou, are hereafter to be appointed at the *July* Term of the General Sessions, and to go into office, and commence their duties on the first day of the next ensuing *January* Term, after their appointment—and to continue in office until the *Monday* before the then next *January* Term. And any vacancy occurring in the office is to be filled up for the year it happens, by the General Sessions, at any Term, or by any Special Sessions, called for that purpose. Act of 1836, 6 Wm. 4, c. 39, sec. 1, 13; in force for two years.]

According to the regulations of the Acts referred to, the Grand Jury and Court of Sessions are to nominate and appoint “fit and proper persons,” to serve as Overseers of the Poor—no other qualification is required—and no particular persons, or professions, are expressly privileged. But it is customary, in general, to exempt (from *this* office) persons belonging to the profession of the law, physic, or Divinity; or holding any public situation; or having served in any Town Office within three years previous; &c. &c.

In making such exemptions, the Grand Jury and Justices exercise a discretionary power: but they cannot too carefully comply with the letter of the law, in selecting “*fit and proper persons*,” to discharge the duties of Overseers of the Poor.

II. THEIR DUTIES.

The duties of Overseers of the Poor are very extensive, arduous, and responsible. They ought, therefore, to be well acquainted with the laws of the Province, respecting the support and settlement of the Poor; and the maintenance and management of Bastards and Lunatics, &c.

In the year 1823 an Act was passed, to repeal, and reduce into one, the several Acts, then in force, relating to the *support* of the Poor; except so far as they relate to the Town of Halifax. This consolidated Act, (4 Geo. 4, c. 6, 3 P. L. 149), with others in amendment, contains the regulations for voting, assessing, collecting, and expending money for the maintenance of the Poor, throughout the Province—except in the Town of Halifax, which is not included in any part of it; and as altered for the Township of Pictou by the Act of 1836, 6 Wm. 4, c. 39. But the several Acts relating to the *settlement* of the Poor, were not repealed by the Act of 1823, and are still in force. The only “Act to provide for the support of Bastard children,” is the 32 Geo. 2, c. 19, 1 P. L. 27; and the Act of 14 & 15 Geo. 3, c. 5, sec. 7, 1 P. L. 187, contains the regulations for the management of mad persons.

The various duties of Overseers, therefore, according to the present laws of the Province, will be considered in the following order:

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1. TO BE SWORN INTO OFFICE.

The first duty of Overseers of the Poor, "after taking upon them the said situation" is, to be "duly sworn to the faithful execution of the duties of the same." Act of 1823, 4 Geo. 4, c. 6, sec. 5, 2 P. L. 150.

They may be sworn in, before the Court of Sessions, at the time they are appointed; or afterwards, by any Justice of the Peace.

When any person, who has been appointed an Overseer, prefers paying the penalty (£5,) to accepting the office, he ought to make known his intention as soon as possible, that another may be appointed in his place.

[The Act of 1836, 6 Wm. 4, c. 39, sec. 7, directs, that every Overseer for the Township of Picton, shall "within ten days after going into office, produce a certificate from some Justice of the Peace of his having been duly sworn to the faithful discharge of his duty"—and leave the same with the Treasurer, who shall record it in a book to be kept by him for that purpose.]

2. TO CALL A MEETING OF THE INHABITANTS.

The next duty of the Overseers, after being sworn into office, is to call a Meeting of the Freeholders, to vote money for the support of the Poor for the current year.

The 5th Section of the Act of 1823, directs,

that the Overseers of the Poor, after taking upon them that situation, and being duly sworn to the faithful execution of the duties of the same, shall, at least twenty days before the time appointed for the meeting of the inhabitants to make provision for the support of the Poor, issue their Precepts to the Constables of the several Townships and Settlements, respectively requiring them to notify the Inhabitants thereof to meet at the time and place appointed for that purpose.

Time of Meeting—Voting money—Appointing Assessors, &c.

The 1st Section enacts "That it shall and may be lawful for the Freeholders of each and every Township within this Province (the Town of Halifax excepted) or of any Settlement or place not comprehended within any such Township, and where there are twenty or more Freeholders resident, to hold two Meetings annually, if necessary, to make provision for the support of their Poor: which Meetings shall be held on the first Monday in April, and on the first Monday in November; and of which Meeting, with the place or places of holding the same, the Constables for the said Townships and Settlements respectively, upon a Precept directed to them, being issued, as hereinafter prescribed, shall give notice, at least ten days before the said times of meeting respectively, at which Meetings the said Freeholders present, having first elected a Chairman to preside at the same, shall and may vote such sums of money as they shall judge ne-

cessary for the support of their Poor for the current year, or for the next ensuing six months of the same, and shall choose and appoint five Freeholders of such Township or Settlement, any three of whom shall be a quorum, to assess as hereinafter mentioned for the sum or sums of money so voted; and in case the business to be transacted at the said Meetings cannot be completed on the said days respectively, it shall and may be lawful for the said Chairman, with the consent of the majority of the Freeholders then present, to adjourn the said Meeting to the day following, or to any other day, and then to conclude the business of the same."

[The time of these Meetings in the Township of Pictou, is altered by the Act of 1836, sec. 2, to "the second Monday after the Terms of the General Sessions of the Peace held in January and July."]

Deficiencies.

The 2d Section of the Act of 1823, enacts—
"That if the sum of money voted at any such Meeting as aforesaid, for the support of the Poor, be insufficient for that purpose, the Freeholders as aforesaid, in such their next Meeting shall be, and they are hereby, empowered to vote as aforesaid, such further sums as shall be determined to be necessary for making good such deficiency."

[The Act of 1836, sec. 12, enacts, that if, upon investigation of the accounts of the Overseers of the Poor for the Township of Pictou, and of the Treasurer, as submitted by him to the Sessions,

"it shall appear that the expenses paid or actually incurred, in and for the previous year, shall exceed the sum voted, assessed, and actually collected, for the support of the Poor, in the same year, and thereby a deficiency shall be left to be provided for, then at their next Meeting, after auditing such accounts, it shall and may be lawful for the Freeholders and Inhabitants of said Township, to vote and assess, in addition to the monies required for the support of the Poor, the amount of any such deficiency, which deficiency shall be assessed, levied, and collected, together with, in the same manner and by the same means, as the monies voted and assessed for the support of the Poor."— (This is nothing more than the Act of 1823 provides, according to the *true intent and meaning* of the second Section. It merely makes more manifest, what appears to be the proper and reasonable construction of that Act.) The same Section also directs, that the money so voted, assessed, and collected, when paid over to the Treasurer, "shall be by him applied to the liquidation of the said deficiency, and be paid to the person or persons to whom such deficiency may or shall be due and owing, as shall appear by the said accounts, to be submitted as aforesaid."]

3. TO APPLY TO THE MAGISTRATES IF THE FREEHOLDERS NEGLECT TO MEET OR VOTE MONEY.

The 8th Section of the Act of 1823, enacts—
"That in case the Freeholders of any Township
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or Settlement as aforesaid, shall neglect to meet on any of the days hereinbefore appointed for the purpose of making provision for the support of their Poor, as before directed, or, having so met, shall neglect to make any such provision, or one adequate and sufficient for the said purpose, in any or either case, the Justices of the Peace in the General Sessions, held for the County or District within which such Township or Settlement is situated, or in any Special Sessions to be called and held for the purpose, shall, on the application of the Overseers of the Poor for such Township or Settlement, amerce such Township or Settlement, in such a sum as shall appear to them to be necessary for the purpose aforesaid."

When the Justices make any such amercement, they are to appoint the Assessors; and the money is to be assessed and collected, in the same manner as when Assessments are made by the Freeholders, at their meetings.

But neither the Justices, nor the Freeholders, are authorised to amerce or assess any Township for *deficiencies* arising before the last previous year; for otherwise, persons coming to reside there, may be assessed for the expense of former years, while they had been contributing to the support of the Poor in another Township;—which would be as unjust as it is unlawful.

The Court of General Sessions of the Peace for the District of Pictou, in the Term of July, 1834, decided, that an Assessment, made by the Justices in a Special Session, for the deficiencies of several

years previous, could not be supported ; and it was accordingly quashed.

4. TO DISPOSE OF THE MONEY VOTED FOR THE SUPPORT OF THE POOR.

The money voted by the Freeholders for the support of the Poor (or in case of their neglect, amerced by the Justices,) when assessed and collected, is to be paid into the hands of the Overseers, who are required to dispose of and apply it *for the before-mentioned purpose only*," that is, for the relief and maintenance of the Poor. Sec. 5.

[The Overseers for the Township of Pictou are required by the Act of 1836 to apply such money "according to Law, and as shall have been directed by the Vote of the majority of the Inhabitants and Freeholders at the Meeting held for voting such Monies." Sec. 4.]

The Overseers are permitted to procure provisions, and other necessities, for the support of poor persons under their charge, who are in the habit of making an improper use of money, where it is supplied for that purpose. But they must furnish these provisions and necessities, at the lowest cash price ; and are not allowed to make any profit to themselves, by such dealings.

In some Townships, the Overseers provide for the permanent paupers, by agreeing with persons to keep them for so much during the year. In others, by *setting them up* at the Town Meetings, and *knocking them down*, to the lowest bidders.

The latter practice, though perhaps, the most economical to the parish, is not always the most agreeable to the paupers, who are very tenacious of their rights and privileges; for, as the "lowest bidders" generally give them the lowest living, they are seldom satisfied with their situations. But Overseers are too apt to *overlook* complaints and grievances, which they ought to hear and redress: for, (although the Proverb says—"Beggars must not be choosers,") it is their duty to consult the convenience and comfort, of those unfortunate objects of charity, for whose support the public purse provides.

5. TO RECOVER PAYMENT FROM PERSONS OF
PROPERTY OBTAINING RELIEF.

The 13th Section, Act of 1823, directs—"That when any person shall apply for and obtain relief from the Overseers of the Poor of any Town or place, and it shall happen that such person, at the time of his or her application, or relief, was possessed of, or entitled to, any property, real or personal, out of which the expenses incurred for his or her relief may be repaid, it shall and may be lawful for such Overseers, as creditors to such persons in behalf of the Public, to demand and receive from him or her a re-payment of all, or any part of, the expenses so incurred for the relief of such person, and if need be to enforce the payment thereof, by the usual remedies of attachment, arrest, or other legal process; and all monies so received or

recovered, shall be accounted for by such Overseers as other monies received for the use of the Poor."

6. TO SUE DELINQUENT ASSESSORS AND COLLECTORS.

The Overseers of the Poor are to sue for and recover the fines imposed upon the Assessors and Collectors of Poor Rates, for neglecting to serve in their respective offices, or neglecting any of the duties required of them by the Act, and to apply such fines, when recovered, towards the support of the Poor.

They are also entitled to receive all those fines imposed by various Acts, as penalties for offences, which are directed to be applied to the use of the Poor in their Township, and must apply them accordingly when recovered.

7. TO REFUND PERSONS OVERRATED.

The Act of 1823, Sec. 4, provides—that if any person shall think himself overrated, he may appeal to the Sessions, and that the Justices, upon hearing his complaint, may give redress, "as they in their judgment may think equitable." And the 15th Section directs, that if the person so appealing, shall make it appear to the Justices, that he has been assessed more than his just share or proportion, it shall and may be lawful for the said Justices to cause such persons to be relieved and reimburs-

ed the excess of such rate, "by order to the Overseers of the Poor for the Township or Settlement within which such person or persons was or were so rated, *which Overseers are directed to refund the same.*"

8. TO RENDER THEIR ACCOUNTS TO THE SESSIONS, AND DELIVER BOOKS AND MONEY TO THEIR SUCCESSORS.

The fifth Section requires that the Overseers of the Poor "shall within one month after the expiration of their office, render to the Clerk of the Peace of the County in which they reside, to be by him laid before the Justices at their next Sessions, an account of all sums of money received and expended by them for the support of the Poor, and shall account, on oath, if required, before the General Sessions of the Peace within the several Counties and Districts respectively held next after the expiration of their office, for all sums of money received and applied, and expended by them for the purpose aforesaid; and they shall enter their proceedings in a book to be kept for the purpose; and, at the expiration of their office, they shall deliver the same to their successors, and shall pay into their hands any balance of money received by them as aforesaid, and remaining unexpended."

[The Overseers of the Poor for the Township of Pictou are required, by the Act of 1836, to deliver to the Treasurer, seven days before the first day of the January General Sessions of the Peace, a

correct statement of all receipts and disbursements made by them respectively. Sec. 8.

These accounts together with his own, the Treasurer is to submit to the Sessions, on the first day of each January Term to be audited, and published as the Court shall direct. Sec. 9.]

The Justices of the Peace in their Sessions, are required by the 6th Section, Act of 1823, to "examine the accounts of the Overseers of the Poor, submitted to them as before directed, and shall allow such accounts, if they appear just; and may refuse to allow any sums of money, charged in such accounts, which the said Justices shall have reasonable grounds to believe unduly or unfairly charged or expended."

The Overseers must therefore observe an economical expenditure of the funds provided for the support of the Poor, by furnishing relief to such persons only as are entitled to it, and to such amount only as the necessity of the case requires. They should obtain from their predecessors a list of all the Paupers legally settled in the Township, and the amount that has been allowed for the support of each. They should also keep an accurate account of all the money they receive and expend; and be careful to take receipts, if possible, for all their disbursements, to enable them when an investigation takes place, to give an honest account of their transactions. If, at the expiration of their office, they find that their necessary expenditures exceed the amount voted, and actually collected, for the year they have been in office, they should

lay an account of such deficiencies before the next meeting of the Freeholders, who are authorised to vote a sum sufficient to meet such deficiencies, in addition to what is necessary for the support of the Poor during the current year; and if the Freeholders refuse or neglect to do so, the Justices, upon the application of the Overseers, are bound to amerce the Township for the sum required. But if the Overseers, neglect to reimburse themselves in this manner, they will be personally liable for all the debts they have contracted while in office; and so remain without remedy.

9. RELATIVE TO THE SETTLEMENT OF THE POOR.

1. *Settlements in general.*

A settlement is the right acquired by any of the modes pointed out by Law, to receive the benefit of the poor laws in that township or place, which provides for its own poor, where the right has been last acquired.

It is a permanent indestructible right, when lawfully acquired, and continues for life, or until a new one has been obtained, though it ceases and is destroyed for ever in the township or place where it once existed, upon the acquisition of the same right in another place.

Foreigners, or persons born out of the Province, coming into it to reside, have no settlement in any Township or place, unless they have gained one by some of the ways specified in the Acts of the Province relative to the settlement of the Poor.

Paupers applying for relief in any Township in which they have not gained a settlement, are called casual or transient poor, and if they are entitled to a settlement in any other township or place within the Province, they may be removed there; if not, and are real objects of charity, they may be sent to the Poor House in Halifax; but the Overseers of the Township in which they happen to become paupers must in the mean time relieve them.

2. The different modes of gaining a settlement in this Province.

The settlement of the Poor in this Province is regulated by the following Acts, viz.—

Act of 1770,	10 Geo. 3, c. 1,	1 v. P. L.	157
"	1774, 14 & 15 Geo. 3, c. 1,	"	186
"	1803, 43 Geo. 3, c. 3, 1,	"	469
"	1817, 57 Geo. 3, c. 9, 3,	"	9
"	1833, 3 Wm. 4, c. 42, 4,	"	221

The Act of 1770, sec. 1, enacts—That "no town or township within this Province, shall be obliged to maintain any poor person or persons, unless such person or persons be a native of such town or township, or have served an apprenticeship, or have lived as an hired servant one whole year, next before such person's application for relief, or have executed some public annual office, or shall have been assessed and paid his or her share of the taxes for the poor of such place, or any public taxes during one whole year, at one time." Sec. 2. "Every person within the said

descriptions shall be entitled to a settlement in the respective towns or townships wherein such person or persons shall be so qualified as aforesaid."

The 7th Section enacts—"That in case of the death of the Parents of any child or children who have gained a settlement in any Township, as aforesaid; all and every such child or children, shall be supported by such town or township wherein the parents so gained a settlement."

A settlement, therefore, may be acquired in this Province, in any of the following ways; viz:

1. A Settlement by Birth,
2. " by Apprenticeship,
3. " by hiring and service,
4. " by executing a public office,
5. " by payment of Taxes,
6. " by death of Parents who have gained a Settlement.

1. BY BIRTH.—Every native of the Province is entitled to a settlement by Birth in the township or place where he was born, unless he has subsequently gained one in some other township or place.

2. BY APPRENTICESHIP.—Any person that has served a regular apprenticeship in any Township, will be entitled to a settlement there, till he has gained one in some other part of the Province. If an apprentice has been assigned over to a second or a third master, and has served out his full time in the same township, he will be entitled to a settlement by Apprenticeship.

3. **By HIRING AND SERVICE.**—That part of the Act of 1770, which relates to the service that shall entitle a Pauper to a settlement, being doubtful, the Act of 1817, 57 Geo. 3, c. 9, 3 P. L. 9, was passed, which enacts—"That, to entitle a Pauper of that description to a settlement, he or she shall have lived as an hired servant for one whole year under an agreement to serve one whole year, next before such person's application for relief."

4. **By EXECUTING A PUBLIC OFFICE.**—A man, who is of sufficient repute and station among his neighbours, to be appointed to a public annual office, and who discharges the duties of such office for that period, is entitled to the privilege of a settlement in the township where he has been thus known and employed.

5. **By PAYMENT OF TAXES.**—To give a settlement, by payment of taxes, the person paying must be the person rated, for if the owner of property is assessed, and the tenant in possession pays the rate, neither thereby gains a settlement. (See 4 Burn's J. 657.)

6. **By PARENTAGE.**—Children, whose parents are dead, take their parent's last legal settlement, until they acquire another for themselves. If the deceased parents had no settlement, and their children were born in the Province, the place of the children's birth will be their place of settlement. Children whose parents are alive, also take their parent's settlement so long as they remain in the

family, or as it is called, are unemancipated. This last is called a derivative settlement.

BY MARRIAGE.—There is also another species of derivative settlement, namely, by marriage. If a woman marries a man who has a settlement, she thereby at once acquires the husband's settlement; and she takes any subsequent one which he may obtain until his death. But if a woman who has a settlement, marries a man who has none, her settlement is thereby suspended; but when her husband dies, her former settlement revives again. This last case is that which is said by Sir James Burrow, to be turned into the following catch, which was the only report of it he had been able to find :

A woman, having a settlement,
 Married a man with none :
 The question was—He being dead,
 If that she had was gone.

Quoth Sir John Pratt *—"Her settlement
 Suspended did remain
 Living the husband ; but him dead,
 It doth revive again."

3. Removal of Paupers who have not gained a settlement.

The Act of 1770, sec. 3, enacts—"That any person or persons who shall apply to the Overseers

* Then Lord Chief Justice.

of the Poor for relief, not having obtained a lawful settlement in the township, shall be required to deliver, on oath, before one of His Majesty's Justices of the Peace, for the said Township or County wherein such Township shall be, his, her, or their, last place of residence; and if they are found to have gained any lawful settlement within this Province, a true copy of the said declaration, attested by the said Overseers of the Poor, and certified by the said Justice of Peace, together with the amount of expense incurred, shall be transmitted to the Overseer of the Poor for the Township to which the said person or persons shall belong, and in case they refuse or neglect to remove the said person or persons, and pay the expenses incurred, it shall and may be lawful for any two of His Majesty's Justices of the Peace for the County or Township where such persons have become chargeable, by a warrant under their hands and seals, to cause him, her, or them, to be removed to the township where they last obtained a lawful settlement, and the Overseers of the Poor are hereby required to receive such person or persons, and to pay such sum or sums of money as shall have been necessarily expended as aforesaid, to the Overseers of the Poor of the township from whence such person or persons have been removed; *Provided always*, That in case such Overseer or Overseers of the Poor, shall not have money in their hands wherewith to answer said expense, such Overseer or Overseers shall stand charged therewith, until the next assessment to be made on the

township to which such poor person shall belong."

The Act of 1803, (43 Geo. 3, c. 3, sec. 1, 1. P. L. 460,) provides, that when any poor person applies to the Overseers for relief, and makes declaration of his place of settlement, as mentioned in the foregoing Act of 1770, the Overseers shall grant the necessary relief to such poor person, and send notice to the Overseers of the Township in which he has a settlement, to remove such poor person thither, and pay the expenses incurred; or in case of death to pay the expense of relief and burial, &c., which such Overseers are to pay or stand charged with in manner directed by the said Act of 1770.

Persons applying for relief in a township where they have not gained a settlement, are called casual or transient Poor, and it is contrary to the humane spirit of the English laws, that any such persons shall be permitted to perish from starvation or want of medical assistance. Whoever, therefore, is by sudden emergency or urgent distress deprived of the ordinary means of subsistence, has a right to resort for immediate relief to the Overseers of the Poor for the Township in which he may happen to be, at the time when he is thus bereft of support, whether he has gained a settlement there or not; and it is the duty of the Overseers *immediately* to render the necessary assistance under such circumstances. The Township, however, may in ordinary cases get rid of the burthen by sending the pauper to his own settlement, (if he has one) the Overseers of which are bound to re-

ceive and relieve him, and pay the expenses incurred on his account as before-mentioned. But relief in the mean time cannot lawfully be denied to the absolutely necessitous, and when the necessity arises from bodily accident, or any sudden calamity, which renders the removal of the pauper dangerous or improper, the Township in which the accident has happened, must bear the charge of his support during his illness, or until he is in a fit state to be removed.

4. *Beggars and Vagrants.*

The Act of 1770, sec. 4, enacts—"That it shall and may be lawful for any two of His Majesty's Justices of the Peace, on complaint of the Overseers of the Poor, to bind out any person or persons, who shall be found begging or strolling about, for any term not exceeding one year."

5. *Liability of Parents and Children to maintain each other.*

To prevent Townships from being improperly burthened, when persons are able to maintain their parents or children, who are poor and unable to work, the fifth section of the same Act directs:—"That the father and grandfather, mother and grandmother, and the children and grandchildren, severally and respectively, of every poor, old, blind, lame, and impotent person, or other poor persons not able to work, being of sufficient ability, shall at his, her, or their charges and expenses, relieve

and maintain every such poor person as aforesaid, in such manner as the Justices of the Peace, at their General or Quarter Sessions, shall order and direct—on the penalty of forfeiting and paying five Shillings for each person so ordered to be relieved, for every week they shall fail therein, to be sued for, levied, and recovered, in the usual manner, and applied for the use of the Poor.”

The Act only extends to natural relations, and not such as are acquired by marriage. A man is not therefore bound to maintain his son's wife; nor his son's widow; nor his wife's mother; nor his step-children after their mother's death. (See 4 Burns' J. 165, 6; 13 Pet. Abr. 573.)

6. Persons possessed of property leaving their families destitute.

As it sometimes happens that persons possessing property, run away from their places of abode and legal settlement, and leave their families a public charge, the sixth Section of the Act of 1770, enacts—“That it shall and may be lawful for the Overseer or Overseers of the Poor of any township within this Province, where any husband or father shall absent from, and forsake his wife and children, or any widow shall absent from, and forsake her children, and leave them a public charge, to apply to two Justices of the Peace, and by warrant under the hands and seals of the said two Justices, to take and seize the goods and chattels, and let out and receive the annual rents and profits of the lands

and tenements, of such husband, father, or mother, so absconding as aforesaid, for and towards the maintaining, bringing up, and providing for, such wife, child, or children, so left as aforesaid, and so soon as the said seizure shall be allowed of, and confirmed by the Justices in their General or Quarter Sessions of the Peace, it shall and may be lawful for the said Overseers, or any two of them, from time to time, and as the case may require, to sell and dispose of so much and so many of the said goods and chattels at public sale to the highest bidder, and apply the money arising thereby, towards the maintenance of such poor family so left as aforesaid."

[The Act of 1836, sec. 14, authorises the Treasurer or the Overseers of the Poor for the Township of Pictou, to sell and make a Deed of the Real Estate within the Township, belonging to any person who has absconded and left a wife, children, or family, chargeable to such Township, and to apply the proceeds towards the support of the Poor. The land or Real Estate to be sold "subject to all prior legal lien, claims, or incumbrances thereon."]

7. *Insane Persons.*

Insane Persons are entitled to the same settlement and support in a Township as they would be were they possessed of reason.

The Act of 1774, 14 & 15 Geo, 3, c. 5, sec. 7, 1 P. L. 187, enacts:—"That where persons, by lunacy, or otherwise, are furiously mad, and dan-

gerous to be permitted to go abroad, it shall be lawful for two Justices where such lunatic is found, by warrant directed to the Constables, Churchwardens, and Overseers of the Poor, of the township or place, to cause such person to be apprehended, and kept safely locked up in some secure place within the county, as such Justices direct; and if such Justices find it necessary to be there chained, if the legal settlement of such person be in any place within such county, and if such settlement be not there, such person shall be sent to the place of his last legal settlement by a pass, and shall be locked up and chained by warrant of two Justices of the county to which such person is to be sent, and the charges of removing and maintaining and curing such person, during such restraint (which shall be for such time only as such madness continues) shall be paid, being first proved upon oath, by order of two Justices directing the Churchwardens or Overseers of the Poor, where any goods, lands, or tenements, of such person be, to seize and sell so much of the goods, or receive so much of the rents of the lands, as is necessary to pay the same, and to account for what is so seized, sold or received, to the next Sessions of the Peace; but if such person hath not an estate to pay the same over and above what is sufficient to maintain his or her family, then such charge shall be paid by the township or place to which such person belongs, by order of two Justices, directed to the Churchwardens or Overseers."

10. RELATIVE TO BASTARDS.

When the parents of a bastard child neglect to provide necessaries for its support, the Overseers of the Poor for the Township in which it is born, are obliged to maintain it. But to prevent the public from being burthened with such expense, the Law has provided a method of compelling the parents to provide for its support, or give security to indemnify the Township from all costs and charges on its account. It is therefore the duty of the Overseers, when a bastard child has, or is likely, to become chargeable to the Township, to adopt those measures which the Law directs, in order to secure its maintenance. These are—

1. To have the mother examined, and the reputed father apprehended.

2. To make the father give security to indemnify the Township.

3. To make him enter into recognizances to appear at the Sessions.

4. To obtain an order of maintenance; and make the mother or reputed father find security that the child shall not become burthensome to any place in the Province, or pay twenty pounds.

These steps are to be taken pursuant to the directions of the Act of 1758, 32 Geo. 2, c. 19, 1 P. L. 27, which, not being a very long one, will be here inserted at full length:

Sec. 1. "If any woman shall be delivered of a bastard child, which shall be chargeable or likely

to be chargeable to the Province, she having declared to the midwife or other persons assisting her at the time of delivery, who the father of such child was, and shall have at some time before, declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any place within the Province, and shall in either of such cases, upon examination to be taken in writing upon oath, before one Justice of the Peace, near where such place shall lie, charge any person with having gotten her with child, it shall and may be lawful for such Justice, upon application made to him by the Overseers of the Poor of such place, or any one of them, or some substantial householder of such place, to issue out his warrant to apprehend such person so charged as aforesaid, and to bring him before him or some other of his Majesty's Justices, and to commit such person to gaol or the house of correction, unless he give security to indemnify such place from the supporting or maintaining such child or children, and shall enter into recognizance with sufficient security for his appearance at next Quarter Sessions, where he shall be continued on recognizance till the woman is delivered of such child or children, *Provided*, that if such woman shall die or be married before she be delivered, or miscarry, of such child or children, or shall appear not to have been with child at the time of her examination, such person shall be discharged from his recognizance at the next Sessions, or immediately released out of custody, if committed."

Sec. 2. "That any two Justices of the Peace near the place where any bastard child shall be born, upon complaint made by the Overseers of the Poor, or any one of them, or of some substantial householder, upon due examination of the cause and circumstances, shall and may by their discretion make an order for the relief of such place, or children, and for keeping such bastard child, and that said mother or reputed father of such child or children, shall find sufficient security that such child shall not become burthensome or chargeable to any place in said Province, or pay the sum of twenty pounds, which shall be paid into the hands of the Overseers of the Poor, for the support of such child or children, or other town uses. And if, after the said order made by the said Justices, and by them subscribed and directed to the Overseers of the Poor, any of said persons, viz. either the father or mother, upon notice thereof, shall not for his or her part observe and perform said order, then such party, making default, to be committed to gaol or house of correction for the space of six months, except he or they shall give sufficient security to perform said order, or else personally appear at the next Quarter Sessions and abide by such order as shall be made at said Sessions in that behalf, and if no order shall be made at said Sessions, then to abide by the first order."

3d Section enacts—"That in case any woman shall accuse or charge any man with having gotten her with child, though the woman be not with child, or that the child be not really his, but ap-

pears to be only a contrivance to defame the person or cheat him of his money, that in such case the said woman shall be sent to the house of correction, there to be whipped and remain for the space of six months."

4th Sec. provides—"That if any person shall think himself wrongfully charged, or if the person charging him be a woman of ill fame or a common whore, in such cases, upon giving security to abide the judgment of the Court, he may appeal from the order of the Justices, to the next Sessions, when the whole cause may be heard and tried by such Court on the verdict of a Jury."

The foregoing is the whole of the Act, which is the only Statute of the Province relative to the support of Bastard Children.

A woman cannot be compelled to submit to the examination mentioned in the first Section of the Act, before she is delivered, for the child cannot be illegitimate before it is born, there being always a possibility that it may be born in lawful wedlock. Such examination, therefore, must be voluntary. (See Lord Raymond's Reports, p. 1368.)

The Justice should, after being satisfied from the examination that the person charged is the father, issue his warrant to apprehend him. Such warrant continues in force until it is fully executed and obeyed; before that is done, the party may be arrested under it at any time, however distant, during the continuance of the Magistrate in the commission.

The taking of a Bond seems not so convenient

as an order made by the Justices, because the suing on a bond is both tedious and expensive; whereas the course of carrying an order into execution is very short and easy. But, on the other hand, a Bond will bind a man's executors; whereas the order of the Justices being obligatory only upon the man himself, when he dies the order dies with him.

If a Bond be given, it should be entered into by the reputed father and one or more sureties, with the existing Overseers, in trust for the township, conditioned to indemnify and save it harmless from all costs and charges whatever, for or by reason of the birth, education, or maintenance of the child, and "all actions, suits, charges, troubles, & demands of and concerning the same."

The Bond becomes forfeited as soon as the township has been necessarily put to cost and charges for the child's support, but not before.

If the father offer to take and maintain the child, and the Overseers choose to support it, they cannot proceed against him on the Bond.

An action on the Bond must be brought in the names of the Overseers for the time being, and not of those to whom it was given, if out of office.

The order of maintenance mentioned in the 2d Section, may be made at any time after the birth of the child, by any two Justices, on the complaint of the Overseers, or any substantial householder. Sec. 2.

If the mother marry before the order is made, she may notwithstanding be committed for disobeying it.

Before an order is made on the reputed father, he should be summoned to appear, in order to give him an opportunity of being heard in his own defence. 3 East 58.

If the mother be dead, her examination taken under the directions of the first Section, will be sufficient to make an order on the father; but, if living, her testimony should be taken, though it is not essential to the order, for it may be made on the evidence of others. 1 Ph. Ev. 359.

After the woman has been delivered she may be committed if she refuses to answer the questions legally put to her. 2 H. Bl. 1017.

The order must be subscribed by two Justices and directed to the Overseers; and if the father or mother do not perform it on getting notice, they may be committed to gaol or to the house of correction, for the space of six months, unless they give security to perform it, or to appear at the next Sessions, and abide by the order made, or if none be made to abide by the first order, viz. the order of maintenance. Sec. 2.

The Recognizance will be forfeited by non-appearance, or not performing the order.

If the parents disobey the order, they may be indicted for it, as for disobeying any other legal order of the Justices. Having taken a recognizance is no bar to the Indictment, and they may be proceeded against on both at the same time. 1 Burn's J. 376.

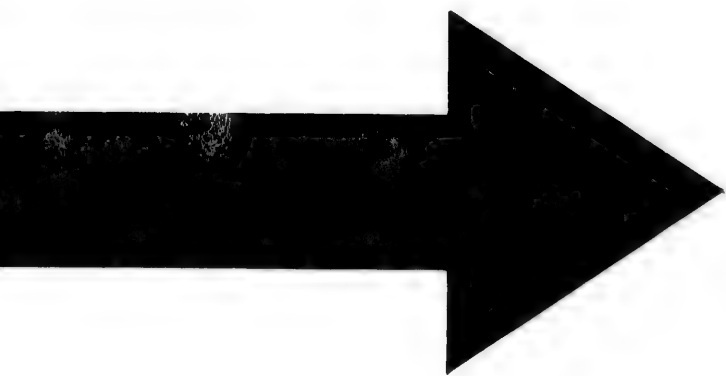
11. AS SURVEYORS OF TOWNSHIP LINES AND BOUNDS.

The Overseers of the Poor are also the surveyors of Township lines and bounds, and the Act of 1765, (5 Geo. 3, c. 1, 1 P. L. 106,) under which they are so appointed, empowers them "to survey examine, and ascertain the lines and bounds of their respective townships, agreeable to the several grants thereof."

The 3d Section of this Act directs—"That the original boundary lines of each and every Township or district within this Province, shall be run betwixt township and township, and marks renewed once in three years, viz. on the first Monday of March, by the Surveyors of lines and bounds appointed for the respective townships, as directed by this Act, or the major part of them, and the persons so appointed for each respective township are hereby empowered and directed to give six days notice to the persons appointed for the adjacent townships," and "whenever the surveyors of any township, which shall have notice as aforesaid, shall neglect or refuse to attend the said business, the surveyors who shall have given such notice, shall, and they are hereby empowered to proceed in running and making such line, which shall be as effectual as if the surveyors of both townships had joined."

The Act of 1765 made no provision for defraying the expense of running and establishing the lines of





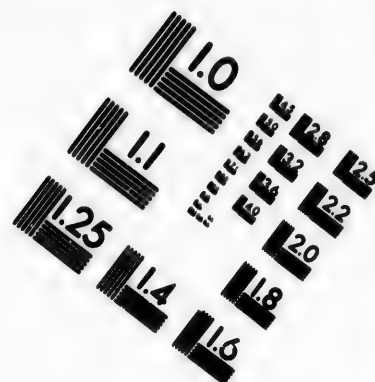
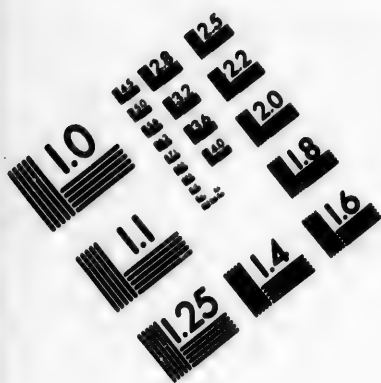
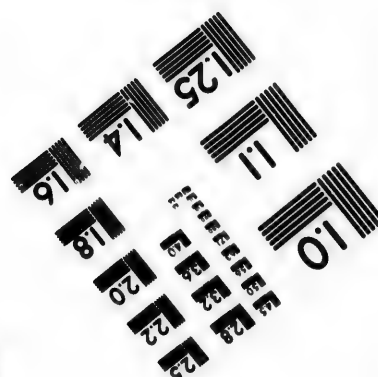
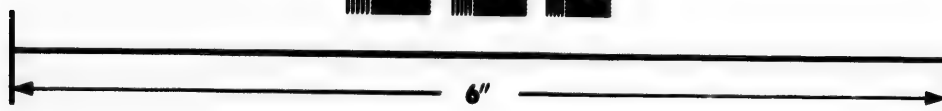
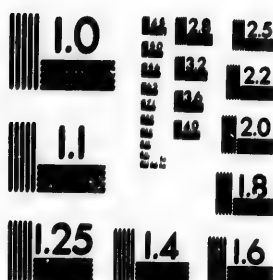


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townships, nor was any made until the Act of 1811 was passed, which enacted, Section 1, "That the inhabitants of the said several townships shall, at the periods prescribed by law for providing for the Poor, vote such sum or sums of money as may be necessary to defray the expense incurred by running or perambulating the bounds of such township, which sum or sums of money shall be first approved of, and allowed, by the Court of General Sessions for the County or District of which such Township forms a part, and being so approved, allowed, and certified, shall be assessed and collected in the same manner as the money voted for the support of the Poor, and shall be applied for the purpose aforesaid."

Sec. 2. "That all appeals from the rate so to be made, shall be heard and determined in the same manner as appeals from the Poor rate are heard and determined."

Whenever any expense has, therefore, been incurred, by running out and establishing the township lines and bounds, which the Overseers of the Poor are required to do once in three years, the amount of such expense must be included in the next rate to be made for the support of the Poor.

Act of 1811, 51 Geo. 3, c. 4, 2 P. L. 67; made perpetual by Act of 1820, 1821, 1 & 2 Geo. 4, c. 7. 5P. L. 104.

III. THEIR LIABILITIES.

1. FOR REFUSING TO SERVE.

The 7th Section of the Act of 1823 enacts—
“That each and every person who has been duly nominated and appointed an Overseer of the Poor, and who shall refuse to serve in that office, shall forfeit and pay the sum of five pounds for such refusal, which sum shall be sued for and recovered before any two Justices of the Peace, by the Overseers of the Poor* who shall be in office next after such refusal, within and for the township or settlement for which such person refused to serve as aforesaid.” The fine to be applied towards the support of the Poor.

2. FOR NEGLECTING TO CALL MEETINGS OF THE INHABITANTS.

Same Act and Section—“And the Overseers of the Poor for the time being, of the several townships and settlements respectively, who shall neglect to issue their Precept, as before directed, to the Constables, requiring them to notify the inhabitants to meet on the days appointed by this Act, for the

* By the Treasurer in the Township of Pictou. Act of 1836, 6 Wm. 4, c. 39, sec. 15,

purpose of voting money as aforesaid, shall severally forfeit and pay the sum of ten Pounds, which shall be sued for and recovered * by the Clerk of the Peace for the County or District wherein such fine was incurred, or by any other person who will sue for the same, and before any Court of Record within such County or District:" the fine to be applied towards the support of the Poor.

**3. FOR NOT RENDERING THEIR ACCOUNTS TO THE
CLERK OF THE PEACE.**

Same Act, and Section—"And all such Overseers of the Poor as shall not, hereafter, within one month after the expiration of their office, render to the Clerk of the Peace an account of all sums of money, received and expended by them for the support of the Poor, in manner directed by the fifth Section of this Act, shall, on complaint of the said Clerk, or of any one or more inhabitants, forfeit and pay the sum of five pounds each, which shall be levied upon non-payment thereof, by Warrant, under the hands and seals of any two of the Justices of the Peace: the fine to be applied as the last.

**4. FOR NEGLECTING TO ATTEND AT THE SURVEY
OF TOWNSHIP BOUNDARIES.**

Any person appointed a Surveyor of Township lines and bounds, neglecting to attend at the place

* See note p. 91.

mentioned in the notice from the surveyors of the adjacent township, being duly served with such notice, "shall forfeit and pay the sum of forty shillings each, to be recovered on complaint before any two of His Majesty's Justices for the County where such complaint shall be made, and one half of the forfeiture shall be paid to the person or persons who shall complain and prosecute for the same, and the other half to the Overseers of the Poor, for the use of the Poor of such towns from whence the complaint was made." Act of 1765, Geo. 3, c. 1, sec. 3, 1 P. L. 107.

5. UPON THEIR CONTRACTS.

The Overseers of the Poor are liable, like all other persons, upon their contracts, express or implied, for necessities furnished to the use of the Poor, or otherwise; and the promise of one binds all the others in the same township.

An Overseer is not liable to pay a Surgeon's bill for attending the Paupers of his township, unless there has been an order by him, or a subsequent promise, or a knowledge of the attendance and an acquiescence in it. The moral obligation of an Overseer to provide physic for a pauper, is a good consideration for a promise, but does not of itself amount even to an implied promise. But the bare knowledge that the Surgeon is in attendance, and not objecting to it, will make the Overseer liable.

The Overseers must sue and be sued jointly.

4 M. & S. 275, 2 East 505, Buller, N. P. 130.

6. FOR MISCONDUCT IN OFFICE.

The Overseers are liable to a fine of forty shillings for "being guilty of any neglect or misbehaviour in the execution of the duty of their office." To be recovered before any two Justices, levied by warrant of distress, and applied to the use of the poor. Act of 1765, 5 Geo. 3, c. 1, 1 P. L. 107,

They are, therefore, liable if they do not provide for the poor; or if they relieve them when there is no necessity. They are also liable, in damages, for acts done by them without authority, or in abuse of their office. 4 Burn's J. 32.

7. EXTRA LIABILITIES OF THE OVERSEERS FOR THE TOWNSHIP OF PICTOU.

The Act of 1836, sec. 7, makes the Overseers of the Poor for the township of Pictou liable to a penalty of three Pounds, for neglecting, within ten days after going into office, to produce a certificate from some Justice of the Peace of their having been sworn into office, and leave the same with the Treasurer: and sec. 8th, to a penalty of ten Pounds, for neglecting to deliver to the Treasurer seven days before the first day of the January Sessions, a correct statement of all their accounts and debts. The penalties to be recovered by the Treasurer; for the support of the Poor. Sec. 15.

IV. THEIR PRIVILEGES.

1. PROTECTION FROM VEXATIOUS SUITS.

As the Overseers of the Poor, in the discharge of their various duties, may occasionally be subjected to vexatious actions, it has been decided that they are within the protection of the Act passed in 1814, (54 Geo. 3, c. 15, sec. 7, 2 P. L. 122) "for indemnifying Constables and *other officers* acting in obedience to Justice's Warrants."—This Act, and the privileges which it confers, have been already noticed, in considering the office of "Constables"—"Their Privileges," Chap. 1, p. 48 49. Therefore, in order to avoid repetition, the reader is requested to refer to that Chapter, for further particulars.

2. COMPENSATION FOR SERVICES.

The Overseers are not entitled to any salary or compensation for their services; but sometimes when one acts as Treasurer to the rest, and has extra duties to perform, he is allowed a small remuneration by the Township. They are, however, allowed the expenses incurred by them as Surveyors of Township lines and bounds, in running out and establishing such boundaries, which

the Act requires to be done once in three years. (See p. 89 and 90.)

In order to obtain the allowance of law expenses, the Overseers must not have misconducted themselves in contracting them. And such advances, or any other lawful expenses, though not forming an item of immediate relief to the poor, must be included in the rate for the support of the Poor; the Act of 1823 requiring the assessment to be made expressly for that purpose.

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CHAPTER III.

ASSESSORS OF POOR RATES.

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I. THEIR APPOINTMENT.

II. THEIR DUTIES.

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IV. THEIR PRIVILEGES.

CHAPTER III.

ASSESSORS OF POOR RATES.

I. THEIR APPOINTMENT.

The Assessors of Poor Rates are appointed by the Freeholders, at their Meetings to make provision for the support of the Poor. Act of 1823, 4 Geo. 4, c. 6, 3 P. L. 149.

The first Section of the Act directs, that the Freeholders of the several Townships and Settlements of the Province, (the township of Halifax excepted,) after having met and voted money for the support of the Poor, as before explained,* "shall choose and appoint five Freeholders of such Township or Settlement, any three of whom shall be a quorum, to assess as hereinafter mentioned for the sum or sums of money so voted:"

If the Freeholders neglect to meet, or to make sufficient provision for the support of the Poor, the Justices of the Peace, in General or Special Ses-

* See "Overseers of the Poor," p. 63, 64.

sions, are authorised, on application of the Overseers, to amerce the Township or Settlement, "in such a sum as shall appear to them to be necessary for the purpose aforesaid," and to appoint five Freeholders ("any three of whom shall form a quorum) to assess the same upon the inhabitants." &c. Sec. 8.

When any person who has been appointed an Assessor under this Act, shall refuse to serve in that capacity, the Freeholders or Justices, in each case respectively, shall appoint another in the stead or place of the person so refusing. Sec. 9.

[The Freeholders of the Township of Pictou are authorised to appoint any number of Assessors for that Township, not less than seven, nor exceeding twelve, being Freeholders, "any seven of whom shall be a quorum for the purposes of the said office." 5 Wm. 4, c. 30, 4 P. L. 421.]

The 9th Section of the Act of 1823 provides—
"That no person shall be obliged to serve as an Assessor more than once in three years."

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

Before the Assessors commence the duties required of them by the Act of 1823, they must be "first duly sworn to perform such duties." Sec. 3.

[The Act of 1836, (6 Wm. 4, c. 39, sec. 7.) enacts, that every Assessor shall "within ten days after going into office, produce a certificate from some Justice of the Peace of his having been duly sworn to the faithful discharge of his duty," and leave the same with the Treasurer.]

2. TO ASSESS THE INHABITANTS.

1. *For the support of the Poor.*

The Act of 1823, sec. 3, directs—"That the Assessors, appointed as aforesaid, any three of whom shall form a quorum,* and be empowered to perform all the duties hereby required of them, and, being first duly sworn to perform such duties, shall, forthwith, assess the inhabitants of the Townships or Settlements respectively, for which they have been so appointed, in just and equal proportion, and as near as may be, according to the known estate, either real or personal, of such inhabitants, for making up the sums of money respectively voted for the purpose aforesaid;" that is, for the support of the Poor.

The phrase "any three of whom shall be a quorum," signifies that any three of the persons so appointed, will be sufficient to make the assessment. If, therefore, any one or two of the five refuse or neglect to act, the other four or three may proceed without them; but there must be three at the least.

* Seven in the Township of Pictou.

The word "Inhabitants" means persons permanently resident and sleeping in the Township.

The Assessors should be careful not to assess any property in the Township, unless there is some person resident within it, who is liable to pay the rate, and from whom it can be legally collected. It is not the *property* but the *Inhabitants* of the Township, in proportion to their *known* estate, that the Assessors of Poor Rates are directed to assess. Now, it sometimes happens, that a man lives in one Township, and has property situated in others; he must, therefore, be assessed for the whole of such property, in the township in which he resides, and not in any other.

There are also certain classes of inhabitants, namely, clerks, servants, and apprentices, who generally possess only that species of property, which the law does not contemplate as rateable; such as money, salaries, wages, clothing, &c.; they ought not, therefore, to be assessed for such property. Licensed Teachers are expressly exempted from the payment of both Poor and County Rates, during the time they are employed or engaged in any School established under the Act of 1832, 2 Wm. 4, c. 2, entitled "an Act for the encouragement of Schools." See Sec. 25, 4 P. L. 111. This Act expired in 1836, and was then continued and amended for two years more, by 6 Wm. 4, c. 92.

Most of the deficiencies so frequently occurring in the poor fund, are occasioned by making indiscriminate and inconsiderate assessments, the collection of which is afterwards found to be impracticable.

The 4th Section, Act of 1823, provides, "That no person shall be assessed any sum towards the support of the Poor, unless in the opinion of the Assessors, he shall be able to pay annually the sum of one shilling at least."

From the whole of the Act it appears, that the ability of the Inhabitants, in proportion to their known *rateable estate*, either real or personal, is the criterion by which the Assessors are to be guided; as it is an equitable rule, they ought to adopt and adhere to it, as much as possible.

2. *For Wells and Pumps.*

The Assessors of Poor Rates are required by the Act of 1796, 36 Geo. 3, c. 9, sec. 1, 1 P. L. 379, to assess the money voted by the Inhabitants, at their town meetings, for sinking wells and repairing pumps, in the same manner, and at the same time, as the money voted for the support of the Poor is assessed; and under the same penalties for neglect or refusal.

3. *For Fire Engines, &c.*

It is also the duty of the Assessors of Poor Rates, in those towns to which the Acts relating to Firewards have been extended,* to assess the inhabitants for the money voted or allowed, as town charges, for purchasing and repairing Fire Engines, ladders, axes, buckets, &c. and for other necessary

* See Note, page 33.

expenses incurred by the Firewards. See 1 P. L. 227, 258.

4. For the expense of establishing Township Boundaries.

The Act of 1765 (5 Geo. 3, c. 1, sec. 3, 1 P. L. 107) directs—"That the original boundary lines of each and every township or district within this Province, shall be run betwixt township and township, and marks renewed once in three years;" (See Overseers of the Poor, p. 89:) And the Act of 1811, 51 Geo. 3, c. 4, sec. 1, 2 P. L. 67, enacts—"That the inhabitants of the said several Townships shall, at the periods prescribed by Law for providing for the Poor, vote such sum or sums of money as may be necessary to defray the expense incurred by running or perambulating the Bounds of such townships, which sum or sums of money shall be first approved of, and allowed, by the Court of General Sessions for the County or District of which such Township forms a part, and being so approved, allowed, and certified, shall be assessed and collected in the same manner as the money voted for the support of the Poor, and shall be applied for the purpose aforesaid."

The 2d Section enacts—"That all appeals from the rate so to be made, shall be heard and determined in the same manner as appeals from the Poor Rate are heard and determined."

This Act is made perpetual by 1 & 2 Geo. 4, c. 9, 3 P. L. 104.

5. For damage done in laying out private ways.

The Act of 1826 (3 P. L. 233) authorises the Surveyors of Highways to lay out particular and private ways, (See "Surveyors of Highways"), and provides, "That no damage be done to any person in his Land, or otherwise, without such recompense to be made by the township or settlement in which the said way may be laid out, as the Surveyors of Highways and the persons interested may agree, or as shall be ordered by the said Court of General Sessions of the Peace, upon inquiry into the same, by a jury to be summoned for that purpose; and the sum or sums of money so agreed to be paid by the Surveyors of Highways, or assessed by the jury as aforesaid, together with the expenses incurred, shall be assessed and levied upon the inhabitants of the township or settlement wherein such way lies, and collected in like manner as Poor Rates are assessed, levied and collected." 7 Geo. 4, c. 2, sec. 16.

6. For Salary of Health Inspectors.

The Act concerning nuisances, 5 Wm. 4, c. 17, sec. 1, 4 P. L. 396, authorises the appointment of a Health Inspector for every town or place; and the 5th Section directs that a compensation be allowed for his services, and for the charges incurred in performing the duties of the office; which "shall and may be levied and assessed upon, and collected from, the inhabitants within the limits assigned to him, according as other town charges are, or

ought to be, rated or collected." (That is, at the same time, and in the same manner, as the Poor Rates.)

It will also be the duty of Assessors of Poor Rates, to assess for any other purpose, where the Law directs the money to be raised in the same manner as Poor Rates, or other Town charges.

3. TO ASSESS THEMSELVES.

The Assessors of Poor Rates must include themselves in the Assessments to be made, for any of the foregoing purposes. They were formerly in the habit, in some places, of exempting themselves, by way of compensation for their time and trouble; but the Act of 1835, 5 Wm. 4, c. 30, sec. 2, 4 P. L. 421, enacts—"That hereafter no person or persons, being an Assessor or Assessors of Poor Rate, shall, upon any pretence whatsoever, be exempt from being assessed, and paying his or their due and just proportion of all such Rates, Taxes, or Assessments, as shall from time to time be duly voted, rated, assessed, and levied, for the support and maintenance of the Poor."

4. TO APPOINT COLLECTORS.

When the Assessors of Poor Rates, have assessed the inhabitants for the money voted for the support of the Poor, &c. it is their duty to "appoint Collectors, to collect and receive the same." Act of 1823, 3 P. L. 149.

If any person so appointed a Collector, refuses to serve in that capacity, "he shall forfeit and pay the sum of forty shillings for such refusal, and another person shall forthwith be appointed in like manner to serve as aforesaid." Sec. 10.

None but Freeholders, or persons of property permanently residing in the Township, ought to be appointed Collectors; so that the Overseers may have some security, for the payment of the penalties prescribed for neglecting or refusing to serve, or to pay over the money collected.

III. THEIR LIABILITIES.

1. FOR REFUSING TO SERVE.

The 9th Section, Act of 1823, enacts—"And each and every person appointed an Assessor, who shall refuse to serve as aforesaid, shall forfeit and pay the sum of forty shillings."—To be recovered by the Overseers,* before any two of the Justices; levied by warrant of distress, and applied towards the support of the Poor.

2. FOR NOT MAKING THE ASSESSMENT IN TIME.

The same Section directs—"And each and every person who has accepted the said office and who

* See Note p. 91.

shall neglect or refuse to make the Assessment required within twenty days after his appointment, shall be subject to a fine of five pounds:" to be recovered and applied as the first.

3. FOR NEGLECTING TO ASSESS THEMSELVES.

The Act of 1835, 5 Wm. 4, c. 30, sec. 2, 4 P. L. 421, enacts—" And, if any person or persons, being Assessor or Assessors of Poor Rates, shall refuse or neglect to rate and assess himself or themselves, in a due and just proportion of all or any of such Rates, Taxes, or Assessments, as shall be duly voted or rated, for the support and maintenance of the Poor on the township or settlement for which he or they shall or may be Assessor or Assessors, the person so offending shall forfeit and pay the sum of five pounds." To be recovered and applied as the first.

4. EXTRA LIABILITIES OF THE ASSESSORS FOR THE TOWNSHIP OF PICTOU.

By the Act of 1836, sec. 7, every Assessor for the Township of Pictou, who neglects, within ten days after going into office, to produce a certificate from some Justice of the Peace, of his having been duly sworn to the faithful discharge of his duty, and leave the same with the Treasurer to be recorded, " shall forfeit and pay a penalty of three Pounds." To be recovered by the Treasurer before any two Justices, and applied as other monies voted for the support of the Poor. Sec. 15.

IV. THEIR PRIVILEGES.

The Assessors of Poor Rates are not entitled to any remuneration for their services. They were formerly in the habit of omitting to assess themselves, by way of compensation for their time and trouble ; but they are now expressly forbidden to do so, by the Act of 1835, as before mentioned, p. 105. (See also the penalty for neglecting, p. 107.)

If no compensation is allowed to the Overseers, whose services are so extensive, arduous, and responsible, the Assessors ought not to be paid for theirs, so trifling in comparison.

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CHAPTER IV.

COLLECTORS OF POOR RATES.

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II. THEIR DUTIES.

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2. *For Wells and Pumps.*—3. *For Fire Engines.*
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III. THEIR LIABILITIES.

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IV. THEIR PRIVILEGES.

1. Protection from vexatious actions.
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CHAPTER IV.

COLLECTORS OF POOR RATES.

I. THEIR APPOINTMENT.

The Collectors of Poor Rates are appointed by the Assessors :

1. When the Freeholders meet and vote money for the support of the Poor, the Assessors whom they appoint to assess, are to "appoint the Collectors to collect and receive the same." Act of 1823, 4 Geo. 4, 3 P. L. 149.

2. When the Freeholders refuse or neglect to meet, or to vote a sum sufficient for the support of the Poor, the Justices are authorised, on the application of the Overseers, to amerce the Township for that purpose, and to appoint Assessors, who are to "nominate and appoint Collectors." Same Act, sec. 8.

If any person appointed a Collector, refuses to serve, he shall be fined forty shillings, and another forthwith appointed in like manner. (See further, title "Assessors of Poor Rates," p. 106.)

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The Act of 1823 does not make it imperative upon Collectors of Poor Rates, to be sworn into office; but, like other Town Officers, they ought to be, and usually are, sworn to the faithful execution of their duty.

[The Act of 1836 requires, that every Collector for the Township of Pictou shall, "within ten days after going into office, produce a certificate from some Justice of the Peace of his having been duly sworn to the faithful discharge of his duty," and leave the same with the Treasurer, to be recorded.]

2. TO COLLECT THE MONEY ASSESSED.

1. *For the support of the Poor.*

Every Collector of Poor Rates, is required by the 11th Section of the Act of 1823 to proceed within thirty days, after having accepted the office, "to perform the duty required of him by this Act, of enforcing, agreeable to the directions of the same, the payment of the sum or sums of money which he was appointed to collect."

These directions are as follow:

1st. The 3d Section directs, that "if any person so assessed, shall neglect or refuse to pay the sum

of money for which he or she was assessed as aforesaid, the same shall and may be levied from him or her by Warrant of Distress from any one of His Majesty's Justices of the Peace of the County wherein such person shall reside."

2d. The 4th Section directs—"That if any person shall think him or herself overrated, such person may appeal for redress to the next General Sessions of the Peace, or the next Special Sessions, which may be held for the hearing of such appeals in the County or District wherein such assessment was made, and the Justices in such Sessions are hereby required and empowered to examine, hear and determine, each and every such appeal or complaint, and to give redress, as they in their judgment shall think equitable, and their order and judgment on such appeal shall be final, and bind all parties."

3d. The 14th Section directs—"That if any person assessed under and by virtue of this Act, shall refuse or neglect to pay the sum for which he was so assessed, it shall and may be lawful for the Collector or Collectors appointed to receive the rates for the purpose aforesaid, notwithstanding any such appeal as aforesaid, to levy for the amount of such person's rate by Warrant of Distress in manner hereinbefore provided for recovery of the same."

4th. The 15th Section of the Act directs—"That if the person or persons so appealing to the next General or Special Sessions of the Peace, as hereinbefore provided, shall make it appear to the Justices thereof, that he or they hath or have been assessed or taxed more than his or their just share or

proportion of the amount of the said Assessment, then, and in such case, it shall and may be lawful for the said Justices to cause such appellant or appellants to be relieved and reimbursed the excess of such rate, by order to the Overseers of the Poor for the Township or settlement within which such persons or person was or were so rated, which Overseers are hereby directed to refund the same."

From these four Sections of the Act it plainly appears, that when any person assessed for Poor Rates, after being duly requested, neglects or refuses to pay the same, on any account whatever, the Collector must proceed to enforce the payment of it, by applying to some Justice of the Peace for a Warrant of Distress, to levy for the amount; and that he has nothing to do with the right any person has to be exempted from paying such tax, or the proportion in which he has been assessed.—These are questions for the consideration of the Sessions, to which the party may afterwards appeal; but in the mean time, it is the Collector's duty to enforce the payment; and if he neglects to do so beyond the time limited, he makes himself liable to the penalty.

The Justice who may be applied to for a Warrant, should not grant it, until the Collector has made oath of the refusal to pay, and until the person so refusing has been first summoned to appear before him and shew cause why the Warrant should not be issued; because, on being summoned, the party may shew sufficient reason to the Justice why it should not; as, for instance, that he has already

paid the assessment; or that he is not the person assessed; or that he was never requested to pay, and is willing to do so; for, otherwise a Collector, out of private resentment, or some other improper motive, might sell a person's goods without a sufficient cause. Besides, a Warrant of Distress is in the nature of an Execution; and it is an invariable maxim of the English Law, that no man shall be punished before he has had an opportunity of being heard. See 4 Burn's J. 152—6 Term Rep. 198.

[The mode of enforcing the payment of Poor Rates in the Township of Pictou has been materially altered and facilitated by the Act of 1836, the 11th Section of which enacts, "That together with the Bills of Assessment to be made and delivered to the Collectors, of the monies voted and assessed as aforesaid, there shall be also delivered to each Collector a Warrant signed by two Justices of the Peace for the said District of Pictou, residing within the Township of Pictou, directing and authorising such Collector, in case of the sum assessed upon any person or persons named in such Bill of Assessment, which shall be annexed to the said Warrant remaining unpaid, fourteen days after notice to such person or persons of the amount or amounts upon him, her, or them, assessed, to distrain upon the goods and chattels of such persons neglecting or refusing to pay the sum or sums so assessed upon him, her, or them, without any further or other proceeding; *Provided always*, that before such Warrant shall be executed, or attempted to be executed, notice shall be given in writing, signed

by the Collector, to, or left at the usual place of residence of, every person whose goods and chattels shall be distrained by virtue thereof, at least fourteen days as aforesaid, that such Warrant will be executed, unless the amount assessed upon such person be paid to the Collector; *And provided also*, that every such person shall be entitled to, and shall have the same right to be relieved on, any appeal from such Assessment, as now by law provided.”]

2. For Wells and Pumps.

The Collectors of Poor Rates are required by the Act of 1796, 36 Geo. 3, c. 9, sec. 1, 1 P. L. 379, to collect the money voted by the inhabitants, at their town meetings, and assessed, for sinking Wells and repairing Pumps, in the same manner, and at the same time, as the money is collected for the support of the Poor; under the same penalties for neglect or refusal; and to pay over the money into the hands of the Firewards.

The Act provides, “That if any person shall think himself overrated, he may appeal for redress to the next General Sessions of the Peace of the County or District.” But, in the mean time, he must pay the whole amount for which he has been assessed; and if he refuses, the Collector must adopt the method pointed out for enforcing the payment of Poor Rates.

3. For Fire Engines, &c.

The Collectors of Poor Rates, in those towns

to which the Acts relating to Firewards have been extended,* are required by those Acts, to collect the money assessed upon the inhabitants, for purchasing and repairing Fire Engines, ladders, buckets, &c.; and for other necessary expenses incurred by the Firewards. This money is to be collected at the same time, and in the same manner, as the Poor Rates; under the like penalties; and to be paid into the hands of the Firewards. See 1 P. L. 227, 258; 2 P. L. 90.

4. For the expense of establishing Township Boundaries.

It is the duty of the Collectors of Poor Rates, to collect any money that has been voted for the purpose of running and establishing the Boundaries betwixt Townships. To be assessed and collected in the same manner as the money voted for the support of the Poor. (See the law relative to this under the duties of Assessors of Poor Rates, p. 103.)

5. For damage done in laying out private ways.

When any sum of money has been assessed, to recompense any person for the damage done to his Land, in laying out private ways, it will be the duty of the Collectors of Poor Rates, to collect it, at the same time, and in the same manner, as the Poor Rates. (See the law, p. 104, title "Assessors of Poor Rates.")

* See Note p. 82.

6. *For Salary of Health Inspectors.*

It is also their duty, to collect any sum of money, that may be allowed and assessed, as a compensation for the services of Health Inspectors, in those towns where they are appointed. To be collected in the same manner as other town charges. See p. 104, 5.

3. TO ACCOUNT AND PAY OVER THE MONEY COLLECTED.

The Act of 1823, Section 11, enacts—"That each and every Collector of any sum or sums of money, assessed by virtue of this Act, shall once in every three months, account with, and pay into the hands of the Overseers of the Township or settlement wherein he was acting as such Collector, all sums of money as he may have collected or received in that capacity; and upon his neglect or refusal so to account and pay, he shall and may be prosecuted for recovery of the said sums."

[The Collectors for the Township of Pictou are required by the Act of 1856, sec. 10, to pay over to the Treasurer the money by them collected for the support of the Poor, as follows: "one third part within six weeks, one third part in three months, and the remaining third part in six months, from the time of the receipt of the Bills of Assessment."]

III. THEIR LIABILITIES.

1. FOR REFUSING TO SERVE.

The Act of 1823, Section 10, enacts—"That each and every person appointed a Collector to collect any sum of money assessed under this Act, who shall refuse to serve in that capacity, shall forfeit and pay the sum of forty shillings for such refusal." To be recovered by the Overseers * before any two Justices, levied by Warrant of Distress, and applied to the use of the Poor.

2. FOR NEGLECTING TO COLLECT.

The 11th Section enacts—"And each and every person who has accepted the said office of a Collector, and who shall neglect, for the space of thirty days thereafter, to perform the duty required of him by this Act, of enforcing, agreeable to the directions of the same, the payment of the sum or sums of money which he was appointed to collect, shall forfeit and pay the sum of five pounds for each and every such neglect." To be recovered by the Overseers, in some Court of Record within the Province, for the use of the Poor.

3. FOR NEGLECTING TO ACCOUNT AND PAY.

The 11th Section enacts—"That each and every

* By the Treasurer in the Township of Pictou.

Collector of any sum or sums of money, assessed by virtue of this Act, shall once in every three months, account with, and pay into the hands of the Overseers of the Poor of the Township or settlement wherein he was acting as such Collector, all such sums of money as he may have collected or received in that capacity; and upon his neglect or refusal so to account and pay, he shall and may be prosecuted for recovery of the said sums, by the Overseers* of the Poor for the time being, of such Township or Settlement, by bill, plaint or information, in any of His Majesty's Courts of Record within this Province."

4. EXTRA LIABILITIES OF THE COLLECTORS FOR THE TOWNSHIP OF PICTOU.

By the Act of 1836, sec. 7, every Collector who neglects, within ten days after going into office, to produce a certificate from some Justice of the Peace of his having been duly sworn to the faithful discharge of his duty, and leave the same with the Treasurer to be recorded, "shall forfeit and pay a penalty of three pounds." To be recovered by the Treasurer, before any two Justices, and applied for the support of the Poor. See sec. 15.

They are also required by the 10th sec. to pay over to the Treasurer the amounts by them collected—"one third part within six weeks, one third part in three months, and the remaining third part

* See Note on preceding page.

in six months from the time of the receipt of their Bills of Assessment, *under a penalty for every neglect of forty shillings, and five shillings additional for each and every week in which payment shall be delayed.*" But, if any Collector can satisfy the Justice before whom he is sued, "that the delay in payment arose from unavoidable obstacles and difficulties in collecting the monies to be collected by him," the Justice may remit the whole or part of such penalty.

IV. THEIR PRIVILEGES.

1. PROTECTION FROM VEXATIOUS SUITS.

The Collectors of Poor Rates, in the discharge of their duty, are within the protection of the Act for indemnifying Constables, and *other officers* acting in obedience to Justices' Warrants. (See title "Constables" — "Their Privileges," p. 48 to 51, where the Act is fully explained.) They are likewise entitled to the privilege of the Act of 1829, there also mentioned.

2. COMPENSATION FOR SERVICES.

Collectors of Poor Rates are allowed a Commission on the amount they have collected, by an Act passed for that purpose in 1833, 3 Wm. 4, c. 63, 4 P. L. 240, which enacts—"That the Court

Court of General Sessions of the Peace shall, and they are hereby authorised to, establish the rate of Commission to be allowed to the Collector of the said Poor Rates, the sum, however, not to exceed Five Pounds for every Hundred Pounds by him collected." They are, therefore, entitled to retain 5 per cent. only upon the amount actually collected.

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CHAPTER V.

COUNTY TREASURERS.

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II. THEIR DUTIES.

1. To give bonds and be sworn into office. 2. To receive and pay out the money collected. 3. To render their accounts to the Sessions. 4. To prosecute delinquent Collectors. 5. To take security on appeals from the Sessions.

III. THEIR LIABILITIES.

IV. THEIR PRIVILEGES.

CHAPTER V.

COUNTY TREASURERS.

I. THEIR APPOINTMENT.

The County Treasurers are appointed by the Grand Juries and the Courts of General Sessions of the Peace.

The Act of 1835,* entitled "An Act to direct and ascertain the mode of assessing County and District Rates, and for other purposes," (5 Wm. 4, c. 13, sec. 1, 4 P. L. 385) enacts—That "it shall be lawful for the Grand Jury, in each of the several Counties and Districts of this Province, except the County of Halifax, annually, at the Court of General Sessions of the Peace held for said County or District, to present to the said Court of Sessions the names of three fit and proper persons, being Freeholders in such County or District, one of whom the said Court shall appoint to be a Treasurer for the said County or District for the year ensuing."

* This Act repealed all former Acts relative to County and District Rates.

II. THEIR DUTIES.

1. TO GIVE BONDS, AND BE SWORN INTO OFFICE.

The 1st Section of the Act, after directing the mode of appointing the Treasurers, as above mentioned, continues—"who shall forthwith enter into a Bond to our Lord the King, with sureties, to the satisfaction of the said Court, for the faithful performance of the duties of the said office, and who shall, thereupon, be sworn to the due execution of the said duties, and be invested with all powers and trusts hereinafter mentioned."

2. TO RECEIVE AND PAY OUT THE MONEY COLLECTED.

The 9th Section of the Act directs—"That all money so raised by Presentment or Amercement as aforesaid, and levied and collected from the inhabitants of the several Counties and Districts, shall be paid into the hands of the Treasurers of such Counties and Districts respectively, and shall not be applied to any other uses or purposes than such for which the same was raised, or which is otherwise by law provided."

The 10th Section enacts—"That it shall not be lawful for the Treasurer of any County or District to pay out to any person or persons whomsoever, any money raised as aforesaid, and received by him

as such Treasurer, for any other purposes than those for which the said money was so raised, or for which any such payment may otherwise by Law be made,"—and "no Treasurer or other person or persons concerned shall compound for any money to be raised on such County or District, nor make any deduction whatsoever, for any sum he or they shall pay to any person or persons, but such as he or they shall account for by proper vouchers."—

The 14th Section, after directing the manner in which the forfeitures and penalties imposed by this Act are to be recovered, continues—"And all the said forfeitures and penalties, when recovered, after deducting any expense incurred in prosecuting for the same, shall be paid to the Treasurer of the County or District within which the same were incurred, to be applied in aid of the rates assessed and collected by virtue of this Act."

3. TO RENDER THEIR ACCOUNTS TO THE SESSIONS.

The 10th Section of the Act directs, that, "each and every such Treasurer shall make up his accounts upon oath, of all his receipts and payments, at every Court of General Sessions, held for such County or District, to be approved, or disapproved by the said Court of Sessions, and the same shall be filed in the office of the Clerk of the Peace, for the said County or District."

4. TO PROSECUTE DELINQUENT COLLECTORS.

By the 7th Section, if any Collector of County or District Rates, shall neglect, delay, or refuse, to make collection from the persons named in the Assessment Roll delivered to him, and pay the money to the Treasurer within three months from the time of receiving his Warrant, he will be liable to a penalty of ten pounds, "to be prosecuted for and recovered by the said Treasurer, in a summary manner, before any two Justices of the Peace, or by bill, plaint, or information, in any Court of Record in the Province, by direction of the said Court of General Sessions, or otherwise, and each and every Collector, who shall have received, and shall improperly retain, any money by him collected as aforesaid, shall moreover, by direction of the said Court of General Sessions, be prosecuted for the same by the said Treasurer, before any such Court of Record, in cases where the sum, so improperly retained, shall exceed the sum of five pounds, and for any lesser sum, in the same manner that debts of the like amount between party and party are now by law recovered."

5. TO TAKE SECURITY ON APPEALS FROM THE SESSIONS.

The 17th Section directs, that no certiorari to remove any rates or any orders, or other proceedings of the Sessions, touching such rates shall be allowed "until security be given to the Treasurer

of the County or District, in the sum of ten pounds to prosecute the certiorari with effect, and to pay the costs if the rates or orders shall be confirmed."

III. THEIR LIABILITIES.

The 10th Section of the Act directs, that if the Treasurer of any County or District shall compound for any money to be raised on such County or District; or make any deduction whatsoever for any sum he shall pay to any person or persons, but such as he shall account for by proper vouchers, or neglect to make up his accounts, upon oath, of all his receipts and payments, at every Court of General Sessions, held for such County or District, to be approved or disapproved by the said Court of Sessions; "he shall be incapable to serve again as such Treasurer, and shall, by the said Court of Sessions, be committed to gaol, without bail or mainprize, there to remain until he fairly accounts with such Court of Sessions, held in and for such County or District, and shall receive from the said Court of Sessions a certificate of his having passed his accounts to their approbation."

IV. THEIR PRIVILEGES.

One of the purposes, mentioned in the second Section of the Act, for which money is to be raised

by the presentment of the Grand Jury, is "for paying a salary to the Treasurer of the County or District, for his services in that station."

The amount of the Salary is not limited by this Act; but is presented by the Grand Jury, and confirmed by the Justices, among the other presentments made at the General Sessions of the Peace. In some Counties the Treasurers are allowed the sum of £10, £12, or £15, a-year, for their services; in others, more or less, at the discretion of the Grand Juries.

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CHAPTER VI.

ASSESSORS OF COUNTY RATES.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To make the Assessment. 3. To make out Rolls of Assessment, and deliver them to the Clerk of the Peace.

III. THEIR LIABILITIES.

1. For refusing or neglecting to act. 2. For neglecting their duty.

IV. THEIR PRIVILEGES.

1. Protection from vexatious suits. 2. Compensation for services.

CHAPTER VI.

ASSESSORS OF COUNTY RATES.

1. THEIR APPOINTMENT.

The Assessors of County Rates are appointed annually, by the Grand Juries and the Courts of General Sessions of the Peace.

The Act of 1835, (4 P L. 386,) entitled "An Act to direct and ascertain the mode of Assessing County and District Rates," directs, that where presentment shall be made by the Grand Jury, of any sum of money for any of the purposes mentioned in this Act, "the Grand Jury shall present to the Court the names of such number of good and sufficient Freeholders of the County or District, as the said Court shall direct, as being fit and proper persons to be Assessors and Collectors respectively, of and for the several Townships in such County or District, or for such Settlements or places as shall be named by the said Court, (except the Collectors for the Township of Halifax) and the said Court shall appoint such number, not less than one half of the said persons, as shall be deemed

proper to be and serve respectively as Assessors and Collectors for such townships, settlements, or places, to assess and collect, respectively, as hereinafter directed, the sum or sums of money so presented." Sec. 5.

If any Grand Jury neglect or refuse to make the presentment required by the Act, the Justices of the Peace in any General Sessions, are authorized by the 4th Section "to amerce such County or District in such sum or sums as shall appear to them (upon due proof made before them,) to be necessary," and by the 5th Section to appoint a like number of fit and proper persons, being Freeholders, as are directed to be appointed by the Grand Jury, to be and act as Assessors and Collectors of the sum for which such amercement was made.

The Assessors and Collectors, whether appointed by the Grand Jury, or the Justices, are required by the 5th Section, to be severally notified by the Clerk of the Peace, of their appointment, and to be sworn into office by the Court or any Justice of the Peace; "and in case any person who may be appointed as Assessor or Collector as aforesaid shall die or remove or refuse to accept of such office, or neglect to act therein, another person shall immediately be appointed in his stead, by the Court, or by any two of His Majesty's Justices of the Peace; and any person so refusing or neglecting to act shall forfeit the sum of five pounds."

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

When the Assessors of County and District Rates have received notice from the Clerk of the Peace of their appointment to that office, if they intend to accept it, they must be sworn by the Court of General Sessions, or by any Justice of the Peace, to the due and faithful execution of the said office, "and that without favour or affection, hatred or malice, and to the best of their skill and knowledge." Sec. 5.

2. TO MAKE THE ASSESSMENT.

The Justices in General Sessions by whom any presentment of money shall be confirmed, or amercement shall be made, are directed by the 6th Section of the Act to determine the amount which shall be borne by, and assessed upon, the inhabitants of the several Townships, Settlements, or places within the County or District, in and for which such presentment or amercement was made, and "the Assessors appointed as aforesaid, for such Townships, Settlements or places respectively, shall meet together to make such assessment, at such time, and in such central and convenient places, as shall be appointed by the Clerk of the Peace for that purpose, and shall, within twenty days after

they have been sworn into office as aforesaid, assess the sum so proportioned upon the Inhabitants as aforesaid, in the most just and equal manner they, the said Assessors, can devise, by an equal pound rate, on the real and personal property whereof such Inhabitants shall be respectively in the occupation or possession, within the County, regard being had to the value of the rents of the Real Estate, and the capability of the Personal Estate to produce profit, in which Assessment the said Assessors themselves shall be included"— "which Assessment shall be made, and Rolls shall be subscribed, by a majority of the said Assessors." Same Sec.

Licensed Teachers are exempted from paying County Rates. See "Assessors of Poor Rates," p. 101.

3. TO MAKE OUT ROLLS OF ASSESSMENT, AND DELIVER THEM TO THE CLERK OF THE PEACE.

After having directed the time and manner of making the Assessment, the same Section of the Act continues—"and they, the said Assessors, within the said twenty days, shall make out, and furnish to the Clerk of the Peace for such County or District, Rolls of the names of the Inhabitants so assessed, specifying opposite to their names the sums in which they have respectively been assessed, which Assessment shall be made, and Rolls shall be subscribed, by a majority of the said Assessors."

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III. THEIR LIABILITIES.

1. FOR REFUSING OR NEGLECTING TO ACT.

The 5th Section after having directed the time and mode of appointing the Assessors of County and District Rates, enacts, "and any person so refusing or neglecting to act, shall forfeit the sum of Five Pounds."

This penalty, being below ten pounds, may be recovered by any person who will prosecute for the same, or by the Clerk of the Peace by order of the Sessions, by Bill, Plaint, or Information, before any two Justices, in a summary manner, as in cases of debt, and with the costs levied on the goods and chattels of the offender, by Warrant of Distress, and for want of sufficient Distress, the offender may be committed to gaol, without Bail, for any time not exceeding three months, unless sooner paid. The penalty, after deducting any expense incurred in prosecuting for it, to be paid to the Treasurer, and applied as the Rates. Sec. 14.

2. FOR NEGLECTING THEIR DUTY.

The 6th Section of the Act, after directing how the Assessment is to be made, and the Rolls made out and furnished to the Clerk of the Peace, enacts—"and each and every Assessor, who shall neglect any part of the duty herein required of him, shall

forfeit the sum of Five Pounds." To be recovered, paid over and applied as the last.

IV. THEIR PRIVILEGES.

1. PROTECTION FROM VEXATIOUS SUITS.

In case of any Assessor of County Rates being sued for any thing done or to be done by virtue of the Act of 1835, he will be entitled to the privileges mentioned in the 16th Section, which see under the head of the privileges of Collectors of County Rates. p. 143.

2. COMPENSATION FOR SERVICES.

The Assessors of County Rates are not entitled to any remuneration for their services. The Act of 1835, sec. 6, made an allowance of five shillings per day to each Assessor, "for each and every day, not exceeding four days, that he shall be employed in and about making the said Assessment." But the Act of 1836, after reciting the allowance made by the Act of 1835, and that in some Counties there may be a large number of Assessors, and the duty to be performed being a public duty, which in the ordinary course will fall equally upon all the inhabitants of the different Counties, and it is therefore inexpedient to make such Assessors any allowance, enacted, Section 1st, "That the As-

sessors to be hereafter appointed under the said Act shall not be entitled to demand or receive any pecuniary emoluments or allowance whatsoever, any law, usage or custom to the contrary notwithstanding, but such Assessors shall, and they are hereby required to assess themselves as in the said Act is directed, under the penalty therein mentioned."

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CHAPTER VII.

COLLECTORS OF COUNTY RATES.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To collect the rates. 3. To return their Warrants and pay over the money. 4. To prosecute persons neglecting or refusing to pay. 5. To collect notwithstanding appeals.

III. THEIR LIABILITIES.

1. For neglecting or refusing to act. 2. For neglecting to make collection and payment. 3. For retaining money collected.

IV. THEIR PRIVILEGES.

1. Protection from vexatious suits. 2. Compensation for services.

CHAPTER VII.

COLLECTORS OF COUNTY RATES.

I. THEIR APPOINTMENT.

The Collectors of County Rates are appointed annually by the Grand Jury and Court of General Sessions, pursuant to the directions of the Act of 1835, 5 Wm. 4, c. 13, sec. 5, 4 P. L. 386, and in the same manner as the Assessors of County Rates are appointed, as will be seen under the head of Assessors, Chap. VI, p. 130, where the appointment of both, has been already fully considered.

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The 5th Section of the Act directs that the Collectors after being appointed by the Grand Jury

and the Court, and notified by the Clerk of the Peace, shall be sworn by the said Court, or by any Justice of the Peace "to execute their said office duly and faithfully."

2. TO COLLECT THE RATES.

The 7th Section enacts—"That upon the said Rolls of Assessment being received by the Clerk of the Peace as aforesaid, Warrants under the hands and seals of any two Justices of the Peace within the County or District, with the said Rolls thereto respectively annexed, shall forthwith be issued, directed to the respective Collectors appointed as aforesaid, commanding them to collect from the persons named in such Rolls the several sums set opposite to their names respectively, and the said Collectors shall immediately proceed to make such collection."

3. TO RETURN THEIR WARRANTS AND PAY OVER THE MONEY.

After having made the collection as above mentioned, the Collectors "within three months from the time of receiving such Warrants, shall return the same to the said Clerk of the Peace, and shall pay over to the Treasurer of such County or District, the sum or sums of money so by them collected." Sec. 7.

4. TO PROSECUTE PERSONS NEGLECTING OR REFUSING TO PAY.

The 8th Section of the Act enacts—"That each and every person named in any such Roll of Assessment, who shall neglect or refuse to pay the sum therein specified to be paid by him, her, or them, after demand thereof made by the Collector as aforesaid, shall and may be prosecuted for the same by the said Collector, before any two of his Majesty's Justices of the Peace within the County or District, and on judgment being given against such person or persons for the said sum or any part thereof, the same shall, by Warrant of Distress from the said Justices, be forthwith levied by the Constable or Constables to whom the same is directed, on the goods or chattels of such person or persons, together with the charges of prosecuting and levying for the same, and any overplus, after the sale of such Distress at Public Auction, shall be returned to such person or persons."

5. TO COLLECT NOTWITHSTANDING APPEALS.

The 8th Section also allows an appeal to the next General or Special Sessions of the Peace, to any person feeling aggrieved on account of the Assessment or Collection of County or District Rates, and authorizes such Sessions, if the Justices shall think proper, to order the same or any part thereof to be repaid out of any money collected from the General Assessment on the County or District—

“but,” it continues, “no such appeal shall, in any case, delay or prevent the collection or recovery of the sum assessed upon any such person or persons as aforesaid, but the same proceedings, as hereinbefore directed, shall be had and pursued for the collection or recovery of the same, as if no such appeal had been made.”

The duties of the Collectors of County Rates, as thus pointed out by the Act, are sufficiently plain and intelligible without any further comment or explanation; and it will be their own fault if they allow themselves to incur any of the following Liabilities.

III. THEIR LIABILITIES.

1. FOR REFUSING OR NEGLECTING TO ACT.

If any person who has been duly appointed a Collector of County Rates, refuses to accept of such office, or neglects to act therein, “he shall forfeit and pay the sum of Five Pounds.” Sec. 5. To be recovered and applied as mentioned under the Liabilities of Assessors of County Rates. See p. 134.

2. FOR NEGLECTING TO MAKE COLLECTION AND PAYMENT.

If any Collector of County Rates, who has received a Warrant with a Roll of Assessment an-

nexed, shall neglect, delay, or refuse, to collect from the persons named in such Rolls the several sums set opposite to their names, and within three months from the time of receiving such Warrants return the same to the Clerk of the Peace, and pay over to the Treasurer the money so by him collected, "he shall forfeit and pay the sum of Ten Pounds, to be prosecuted for and recovered by the said Treasurer, in a summary manner, before any two Justices of the Peace, or by Bill, Plaint, or Information, in any Court of Record in the Province, by direction of the said Court of General Sessions or otherwise." Sec. 7.

3. FOR RETAINING MONEY COLLECTED:

"And each and every Collector, who shall have received, and shall improperly retain, any money by him collected as aforesaid, shall moreover, by direction of the said Court of General Sessions, be prosecuted for the same by the said Treasurer, before any such Court of Record, in cases where the sum, so improperly retained, shall exceed Five Pounds, and for any lesser sum, in the same manner that debts of the like amount between party and party are now by law recovered." Sec. 7.

IV. THEIR PRIVILEGES.

1. PROTECTION AGAINST VEXATIOUS SUITS.

The Collectors of County Rates in the discharge

of their duty are within the protection of the Act for indemnifying Constables and *other officers*, acting in obedience to Justices Warrants. See Privileges of Overseers of the Poor. p. 48.

The 16th Sec. of the Act of 1835, directs that no action shall be brought against any person for any thing done or to be done by virtue of that Act, after six months from the time of committing the fact, nor out of the County where the cause of action arose, and the defendant may plead the Act specially, or the general issue, and give it in evidence, and that the same was done by authority of the Act; and if it appears upon trial that it was so done, or that the action was brought after the time limited, or in any other County, then the Jury shall find a verdict for the defendant; and in all cases where a verdict is found, or judgment given, on any account whatever, for the defendant, he shall have treble costs, and recover the same as in other suits according to Law.

2. COMPENSATION FOR SERVICES.

The 12th Section of the Act enacts, "That the Court of General Sessions of the Peace, in the several Counties and Districts, shall, and they are hereby authorised to establish the rate of Commissions to be allowed to the Collectors of the said rates, within the said Counties and Districts, respectively, the said Commissions, however, not to exceed Five Pounds for every Hundred Pounds by them collected."

CHAPTER VIII.

SURVEYORS OF HIGHWAYS.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To give notice of the time and place for performing Statute Labour. 3. To oversee the Statute Labour—1. *The Statute Labour which each person is obliged to perform; the penalties for neglect; and the persons exempted.*—2. *When labour of men preferable to teams.*—3. *Statute Labour of poor persons.*—4. *Aged persons owning teams.*—5. *Persons living on Islands.*—6. *Persons on Islands connected with mainland.*—7. *Labour to be performed by permission of Justices.* 4. Not to alter Highways without consent of Justices. 5. To keep the roads passable in winter. 6. To lay out private ways. 7. To sue persons neglecting to do their Labour. 8. To render to the Sessions an account of the Labour expended.

III. THEIR LIABILITIES.

1. For refusing to accept the office.
2. For neglecting to be sworn into office.
3. For neglect of duty.
4. For neglecting to account for labour expended.

IV. THEIR PRIVILEGES.

CHAPTER VIII.

SURVEYORS OF HIGHWAYS.

I. THEIR APPOINTMENT..

The Surveyors of Highways, or, as they are more generally called, Overseers of Roads, are appointed annually by the Grand Jury, and the Court of Sessions, under the directions of the Act of 1826, 7 Geo. 4, c. 2, 3 P. L. 230, entitled "An Act relating to Highways, Roads and Bridges." Section 1st, enacts—"That it shall and may be lawful for the Grand Juries in the several Courts of General or Quarter Sessions of the Peace for the respective Counties and Districts in this Province, at such Terms as the said Courts shall respectively direct, yearly and every year to nominate so many fit and proper persons as they may consider necessary, as Surveyors of Highways, for each Township or Settlement; and the said Court shall, from the persons so nominated, appoint as many as may be deemed expedient, to be Surveyors of Highways, for the Township or Settlement for which they are so nominated."

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The first Section of the Act, after directing the mode of appointing Surveyors of Highways, as before mentioned, continues ; " and the persons so appointed shall be sworn to the faithful discharge of the duties of that office." If they neglect to be so sworn, " within fourteen days next after such appointment," " having received notice thereof," they are liable to a penalty. See their Liabilities. p. 156.

2 TO GIVE NOTICE OF THE TIME AND PLACE FOR PERFORMING STATUTE LABOUR.

The 5th Section of the Act enacts " That the Constables for the several Townships in this Province, shall make out lists of all such persons who are owners of teams, carts, or trucks, as also of every other householder, and other persons liable to perform labour, under this Act, within their respective Townships, and the Settlements adjoining, and deliver the same to the Surveyors of Highways ; and the said Constables, when required by the said Surveyors, shall summon the said persons contained in the said lists to meet on such days, and at such places, as the said Surveyors shall direct, to perform the labour required by this Act."

The 6th Section also directs, "That the said Surveyors of Highways shall, at the most seasonable time, between the first day of April and the first day of November, yearly, (seed time and harvest only excepted) cause the persons contained in their lists respectively to be summoned, giving them at least six days' notice of the time and place where they are to be employed."

The time thus limited for the performance of Statute Labour, was afterwards altered to "between the twentieth day of May and the twentieth day of September in each year," unless the Governor shall otherwise direct, with respect to any of the great Post Roads. Act of 1828, 4 P. L. 31. See *Murd.* Ep. 141, 146.

The Statute Labour ought to be performed as early in the season after the time appointed, (not to interfere with the seed time) as the state of the roads will admit; that the repairs and alterations made on them may become settled and solid before the fall weather commences. If it is put off till late, the labour then expended is often worse than useless.

The Statute Labour ought also to be performed where it is most required. And it is the Surveyor's duty to have it so done, without favour or partiality towards himself or others.

3. TO OVERSEE THE STATUTE LABOUR.

When the Surveyors have determined upon the time and place for having the Statute Labour

performed, and given notice as before mentioned, the 6th Section directs that they "shall there oversee and order the persons so summoned to labour in making and repairing the Highways, Roads, Streets, and Bridges, in the most useful manner, during the number of days required by this Act, for each person to labour"—

1. *The Statute Labour which each person is obliged to perform : the penalties for neglect : and the persons exempted.*

These are all expressly stated in the second Section of the Act of 1826, 3 P. L. 230, which enacts, "That every person within each Township or Settlement, keeping any cart, team, or truck, shall send, on every day appointed by the Surveyor of Highways, one cart, or team, or truck, with two oxen, or two horses, or with one horse, in case he owns no more, and one able man to drive the same, four days in every year, to work on the Highways, Roads, Streets, or Bridges, allowing eight hours to each day's work ; and such person not attending, or neglecting to perform the said duty, shall forfeit, for every day's neglect, if owning two or more horses or oxen, ten shillings ; and if owning one horse only, seven shillings ; and that every other householder or other person, able of body, between the ages of sixteen and sixty, not being a military person, or holding a commission from His Majesty, in the Military or Civil Department of the Army, or an hired servant, minor, apprentice, journeyman, or day labourer, shall on

every day appointed as aforesaid, either by himself or other sufficient person to be hired by him, and provided with such necessary implements as shall be directed by the said Surveyor, work, and continue so to do, for the space of six days in every year, on the said Highways, Roads, Streets, or Bridges, within the Township or Settlement where they respectively reside ; and every hired servant, minor, apprentice, journeyman and day labourer, shall, on every day appointed as aforesaid, either by himself or other sufficient person, and provided with necessary implements, as aforesaid, work, and continue so to do, for the space of two days, on the said Highways, Roads, Streets, or Bridges, within the Township or Settlement where they respectively reside ; and such householder, hired servant, minor, apprentice, day labourer, or other person, not attending, or neglecting to perform the said labour, shall forfeit three shillings for every day's neglect."

Licensed Teachers are exempted from the performance of Statute Labour, during the time they are employed or engaged in any School established under the Act of 1832, entitled " An Act for the encouragement of Schools." 4 P. L. 111. This Act expired in 1836, and was then continued as amended, for two years more, by 6 Wm. 4, c. 92.

2. When labour of men preferable to teams, &c.

The 4th Section enacts—" That when any Surveyor of Highways shall judge the labour of men more useful and necessary than that of carts, teams, or trucks, the persons who by this Act are to sup-

ply carts, teams, or trucks, shall be, and they are hereby required, under the like penalty, to send two labouring men, instead thereof, furnished with necessary implements as aforesaid."

3. *Statute Labour of Poor persons.*

The 7th Section enacts—"That upon application to two of His Majesty's Justices of the Peace, the said Justices shall and may, in their discretion, lessen the number of days' labour to be performed by any poor person who cannot, without detriment to his family, perform the labour required by this Act."

4. *Aged persons, owning teams, &c.*

The 8th Section directs, "That all persons keeping carts, teams, and trucks, who, being sixty years old, or upwards, are exempt from labouring on the said Highways, or Roads, shall nevertheless, when summoned so to do, send their carts, teams, or trucks, for four days, to assist in making or repairing the same."

5. *Persons living on Islands.*

The 28th Sec. enacts, "That no person residing upon any Island within this Province, whereon there are any Highways or Roads in which the performance of any labour by this Act may be enforced, shall be compelled to work upon any Highway, Road, Street, or Bridge, situate or being upon the main land, or to furnish any labourer, cart, team, truck, oxen or horses, for the said service, nor be

liable to any penalty or penalties for neglecting or refusing so to do, but each and every person residing on any such Island, and liable to perform labour under this Act, shall be obliged to perform the same upon some highway, or public road as aforesaid, upon the Island on which he resides."

6. Persons on Islands connected with the main land.

The 29th Section enacts, "That where any Island shall be connected with the main land by a causeway, bridge, or bridges, the person residing on such Island who shall be liable to perform such labour as aforesaid, shall be obliged to perform such part of the same as may be required in the keeping in repair or rebuilding such causeway, bridge or bridges."

7. Labour to be performed by permission of the Justices.

The Act of 1827, 8 Geo. 4, c. 23, sec. 1, 4 P. L. 10, authorises the Justices in the General Sessions of the Peace, in the several Counties and Districts of the Province, "to grant permission to any person or persons in the said Counties, and Districts, to perform his or their Highway or Statute Labour, in the said several Counties and Districts upon such Roads as they, the said Justices, shall direct and appoint; and the faithful performance by him or them of such statute or highway labour, in pursuance of such permission, shall be deemed and taken to be the doing and performing his or their statute labour. *Provided*, that such

person or persons as may obtain such permission shall, within one month after the performance of such statute or highway labour, obtain from the Surveyor of Highways, for the district in which such person or persons shall reside (who if the said labour has been faithfully performed, is hereby required and directed to grant the same,) a certificate or certificates of the due performance by such persons of such labour ; which said permission and certificate or certificates, shall be a bar to any action to be brought against any such person or persons, under or by virtue of the Act of which this Act is an amendment." viz. the Act of 1826.

4. NOT TO ALTER HIGHWAYS WITHOUT CONSENT OF JUSTICES.

The 9th Section of the Act of 1826 enacts—
"That it shall not be lawful for any Surveyor of Highways, with the consent of the owner of the Land, to alter any Highway, Road or Street, or make any repairs to any Highway, Road, or Street, in any Town, Township, or Settlement, without the advice and consent of, at least, two Justices of the Peace."

5. TO KEEP THE ROADS PASSABLE IN WINTER.

The 10th Section enacts, "That it shall and may be lawful for the Surveyors of the Highways, to order and direct the inhabitants in their respective districts, as often as they shall deem necessary

during the winter, to work on the public Highways, with their horses, oxen and sleds, in order that the roads may be rendered passable. *Provided always, nevertheless,* That no inhabitant shall be compelled to furnish more than one day's labour of himself or cattle, for any one fall of snow, or where the fall or drift of snow shall not exceed the depth of twelve inches."

Penalty for persons neglecting.

The 11th Section enacts—"That every inhabitant refusing or neglecting to obey such order of the Surveyor of Highways, shall forfeit for each refusal, or neglect, the sum of ten shillings."

6. TO LAY OUT PRIVATE WAYS.

The 16th Section directs, "That the Surveyors of the Highways of each Township or Settlement shall be, and they are hereby, authorized, to lay out particular and private ways, either open or pent, with swinging gates, for such Township or Settlement only as shall be thought necessary by the said Court of General Sessions of the Peace, upon application made to them by the persons concerned and interested therein. *Provided,* That no damage be done to any person in his land, or otherwise, without such recompense to be made by the Township or Settlement in which the said way may be laid out, as the Surveyors of Highways and the persons interested may agree, or as shall be ordered by the said Court of General Sessions of

the Peace, upon inquiry into the same, by a Jury to be summoned for that purpose ;" the sum agreed upon or assessed by the Jury, to be levied and collected the same as Poor Rates. See Assessors of Poor Rates, p. 104.

**7. TO PROSECUTE PERSONS NEGLECTING TO DO
THEIR LABOUR.**

The 30th Section enacts—"That all fines and forfeitures directed to be paid by such person or persons as shall neglect to attend and perform the labour, and furnish the teams, carts, and trucks, required by this Act for the repairs of Highways, Roads, Streets, or Bridges, shall be sued for, and recovered with costs of suit, by the Surveyors of Highways before one or more Justices of the Peace, in like manner as debts are sued for and recovered ; which fines, and forfeitures, so recovered, shall be applied to the repairs of the said Highways, Roads, Streets and Bridges."

**8. TO RENDER TO THE SESSIONS AN ACCOUNT
OF THE LABOUR EXPENDED.**

The 12th Section enacts, "That every Surveyor of Highways, shall yearly, at the expiration of his office, render to the Court of General Sessions of the Peace, a true and faithful account, under oath, of all the labour expended by him, designating the names of the persons, and the labour performed by each, and of all the fines received by him,

and shall pay the overplus, if any in his hands, to his successor, for the use of the Highways, under a penalty not exceeding Ten Pounds for each neglect."

III. THEIR LIABILITIES.

1. FOR REFUSING TO ACCEPT THE OFFICE.

If any person who has been appointed a Surveyor of Highways, as hereinbefore mentioned, and received notice thereof, shall refuse to accept of the said appointment, within fourteen days next after such appointment, he shall forfeit for such refusal the sum of five pounds. Act of 1826, 7 Geo. 4, c. 2, sec. 1, 3 P. L. 231.

2. FOR NEGLECTING TO BE SWORN INTO OFFICE.

If any person, so appointed, and notified, shall neglect to be sworn to the faithful discharge of the duties required of his office, within fourteen days next after such appointment, he shall forfeit for such neglect the sum of five pounds. Same Act.

3. FOR NEGLECT OF DUTY.

If any person, having accepted the office of Surveyor of Highways, "shall neglect his duty therein," he shall forfeit the sum of five pounds." Same Act, &c.

3. FOR NEGLECTING TO ACCOUNT FOR LABOUR EXPENDED.

And if any Surveyor of Highways shall neglect to render to the Sessions an account of the labour expended by him, and pay over the money, as before mentioned under their duties, p. 156, he will be liable to "a penalty not exceeding ten pounds for each neglect." Act of 1826, sec. 12.

All these four penalties, "not being less than Five Pounds," "shall be recovered, with costs of suit, by bill, plaint, or information, in any Court of Record in this Province, one moiety thereof to be paid to the person or persons who shall sue for the same, and the other half to be applied to the repairs of Highways, Roads, Streets, and Bridges, within such Township or Settlement, as the Court of General Sessions of the Peace, for the County or District where the offence was committed, shall direct." Same Act, Sec. 31.

IV. THEIR PRIVILEGES.

The first Section of the Act of 1826 concludes as follows—"And the Surveyors of Highways shall be excused from any other service on the Highways, than that of overseeing and ordering the persons employed thereon."

CHAPTER IX.

FENCE VIEWERS.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To view, build or repair Fences ; and here-
in—1. *What are lawful Fences.*—2. *When and
by whom to be kept up.*—3. *When to be built and
repaired by Fence viewers.*—4. *When to be only
viewed.*

III. THEIR LIABILITIES.

IV. THEIR PRIVILEGES.

CHAPTER IX.

FENCE VIEWERS.

1. THEIR APPOINTMENT.

Fence Viewers are appointed annually by the Grand Jury and the Court of Sessions, at the same time, and in the same manner that Constables are appointed. See title "Constables—their appointment." p. 12, and the two Acts there explained.

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The Act of 1765 for the appointment of Town Officers, directs, that all the officers therein mentioned (among whom are Fence Viewers) "shall respectively be sworn to the faithful discharge of their duty in manner as is already prescribed by the laws of this Province, and shall in every respect conform to the said laws." 5 Geo. 3, c. 1, sec. 1, 1 P. L. 107.

2. TO VIEW, BUILD AND REPAIR FENCES.

The office of Fence Viewers consists in viewing, building, and repairing Fences, when notified by any person requiring their services.

Under this head will be shewn,

1. *What are lawful Fences.*

The Act of 1822, 3 Geo. 4, c. 32, sec. 1, 3 P. L. 136, requires—"That all Fences belonging to any enclosed Lands, shall be built or made with stones, pickets, boards, logs, or brush, or posts and rails, unless the lands are bounded by ponds, unfordable rivers, or the sea, or surrounded by good and sufficient hedges; and such Fences and Hedges shall be at least four feet and a half high, except on the Peninsula of Halifax, where four feet in height shall be judged a legal Fence under this Act."

The 15th Section directs—"That such rivers, creeks, bays, harbours, and inlets of the sea, only shall be deemed sufficient and lawful fences, as, in the judgment of the Fence Viewers of the township or place, where such lands lie, shall be sufficiently deep and inaccessible to prevent the passing of cattle."

The operation of this clause of the Act was "found in many cases to be inconvenient." It was, therefore, amended by the Act of 1836, 6 Wm. 4, c. 40, sec. 1, which enacts—"That if any person or persons shall feel aggrieved with the judgment given by the Fence Viewers, under the

said Fifteenth clause of the said Act hereby amended, or shall desire to obtain the judgment and decision of the Court of General Sessions, instead of the Fence Viewers, then, and in either of such cases, it shall and may be lawful for such person or persons to make application to the General Sessions of the Peace, in and for the County or District wherein such Fence Viewers may have authority; and thereupon it shall and may be lawful for the said General Sessions to enquire into the subject matter of such application, and upon hearing the parties interested, and examination of witnesses, to make such order and judgment in respect to such application as may be deemed by the said Court to be just and reasonable, and the order and judgment of the said Court shall be binding and conclusive upon all Fence Viewers and other parties interested or concerned."

2. When and by whom Fences are to be kept up.

The 2d Section enacts, "That the proprietor of any Field adjoining to another enclosed and improved, shall build up and maintain his part or proportion of Fencing, with a good and sufficient Fence of four feet and a half high, on that part of such land as is adjoining his own:"—Act of 1822.

The Act only requires the owners of enclosed, cultivated, or improved *Fields, adjoining others of the like kind*, to keep up their proportion of the division fences; for the third Section provides that the owner or proprietor of any wood, barren, or burnt land, and not under improvement shall not

be compelled "to make any part of the fence against or on said wood, barren, or burnt land."

The Act of 1827, 8 Geo. 4, 4 P. L. 13. also requires "that the proprietor or proprietors of any Field, adjoining to any common Field enclosed and improved, in case his or their part of the Fence dividing his or their Land from such common Field, shall become deficient, or out of repair, shall immediately repair such deficiency, and make the same a good and sufficient legal Fence,"—

3. *When Fences to be built and repaired by Fence Viewers.*

When the proprietor of any such *Field*, neglects, after three days' notice, to put up his proportion of the Fence between it and any other adjoining Field, or common Field, enclosed and improved, as before mentioned, "it shall and may be lawful, and any one of the Fence Viewers, upon application being made to him, in such case, "is required and empowered, by both Acts, (1822 and 1827) "forthwith to cause such deficient Fence to be raised or made, or otherwise to repair any Fence already made, if in his judgment the same is insufficient, and the person or persons that of right ought to build and maintain the same, shall pay double the costs and charges expended for the closing thereof; and, in case of refusal, such Fence Viewers may recover the same, by action on the case, according to the value,"—that is, if below £5, before the Magistrates: if above that sum, before the Inferior Court of Common Pleas. 3 P. L. 136: 4 ib. 13.

4. WHEN FENCES ARE TO BE VIEWED, &c.

By the first statute of the Act of 1822, if any damage is done 'by cattle ("horses, sheep, hogs, and neat cattle") breaking into enclosed lands, and destroying the product thereof, "if such enclosure shall, at the time of such damage, be enclosed by a good and sufficient fence, agreeable to this law, in the judgment of the Fence Viewer, who is hereby appointed to view the same, the owner of such cattle, so trespassing, shall pay, to the party injured, the value of all such damages, to be ascertained on an appraisement thereof by three credible persons living in the neighbourhood, being first sworn before one of His Majesty's Justices of the Peace in the County where such lands lie, truly to value the same;" and if the owner of the cattle, on notice, refuse to pay the amount, the injured party may sue him before the Magistrates, or the Inferior Court, according to the value of such damage.

This is a penal Statute, and, by an established rule of law, must be construed *strictly*. Therefore, if cattle break into a field through a lawful fence, any other part of the fence round it being unlawful; or if they break through an unlawful division fence, which the owner of the cattle ought to keep in repair, he would not be liable, according to this Act, if strictly construed, because the words of it are, "if such enclosure shall, at the time of such damage, be enclosed by a good and sufficient fence, agreeable to this law;" then "the

owner of such cattle, so trespassing, shall pay to the party injured, the value of all such damages." But, to prevent the owners of cattle from escaping the payment of damages, in such cases, the Act of 1836, 6 Wm. 4, c. 40, sec. 2, enacted—
"That in every case where any damage shall be done to the enclosed Lands of any person or persons, by any horse, cattle, sheep, or swine, breaking through the Fences enclosing such Lands, the owner or owners of the horse, cattle, sheep, or swine, shall be liable for the damage so done, under the said Act hereby amended, in case that part of the Fence wherein the said horse, cattle, sheep, or swine, have made a breach, shall be a lawful Fence, notwithstanding some other part of the Fences surrounding said enclosed Lands may not be a lawful Fence.

The 3d Section directs, That the owner or owners of any horse, cattle, sheep, or swine, breaking through any division Fence which the said owner or owners shall be bound to repair and keep up, shall be liable for the damage done by such horse, cattle, sheep, or swine, upon the land of any other person or persons enclosed or partly enclosed by such division Fence, notwithstanding the same may not be a lawful Fence.

When any Fence-Viewer is called upon to inspect an enclosure, which has been broken into and damaged by cattle, it is his duty to go and view the Fences, and give his opinion whether they are lawful, according to the best of his judgment. But he has nothing to do with appraising the damages

sustained in such cases, (as is by some supposed ;) for the Act directs, "the value of all such damages to be ascertained on an appraisal thereof by three credible persons *living in the neighbourhood.*" And when any person refuses or neglects, after three days notice, to put up or maintain his proportion of any Fence according to the law before mentioned, it is the Fence Viewer's duty, "upon application being made to him, in such case," forthwith to build and repair such deficient Fence, "if in his judgment the same is insufficient;" and for so doing he may charge, and recover from, such person, double the amount of the expenses thereby incurred, charging three shillings a day for his own time and trouble.

III. THEIR LIABILITIES.

1. FOR REFUSING TO ACCEPT THE OFFICE.

If any person who has been duly appointed a Fence Viewer, refuses to accept the office, he shall forfeit and pay the sum of forty shillings. To be recovered before any two Justices, levied by Warrant of Distress: and applied to the use of the Poor. Act 5 Geo. 3, 1 P. L. 107.

2. FOR NEGLECT OF DUTY.

If any Fence Viewer is guilty of any neglect or

misbehaviour in the execution of the duty of his office, he shall forfeit and pay the sum of forty shillings. To be recovered and applied as the last. Same Act, &c.

The Acts of 1822 and 1827, before mentioned, both direct, that if any Fence Viewer, when notified, shall neglect his duty therein, he shall forfeit forty shillings for every offence. 3 P. L. 136, 4 ib. 13.

IV. THEIR PRIVILEGES.

The same Acts of 1822 and 1827 provide—
“That no Fence Viewer shall be allowed more than three shillings per day on his account for his own trouble and time expended” in building and repairing Fences, as required by the said Acts. See their Duties. p. 159 to 165.

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CHAPTER X.

POUND KEEPERS.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To take charge of, and advertise the cattle impounded. 3. To feed the cattle impounded; and sell them if the owner does not pay the damages and expenses.—
The Laws relative to rescue and pound-breach.

III. THEIR LIABILITIES.

1. For not accepting office. 2. For neglect of duty.

IV. THEIR PRIVILEGES.

CHAPTER X.

POUND KEEPERS.

I. THEIR APPOINTMENT.

Pound Keepers are appointed annually, by the Grand Jury and the Court of General Sessions of the Peace, at the same time and in the same manner as the Constables, &c. See Chap. 1, p. 12, where the law, relating to such appointments, has been already explained.

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The Act of 1765 (5 Geo. 3, c. 1, sec. 1, 1 P. L. 107) directs that all the Town Officers therein mentioned, "shall respectively be sworn to the faithful discharge of their duty, in manner as is already prescribed by the laws of this Province, and

shall in every respect conform to the said laws."—
As Pound Keepers are among the number of such officers, it will be their duty, in the first place, upon receiving notice of their appointment, to go before some Magistrate, or the Court of Sessions, and take the oath required.

2. TO TAKE CHARGE OF, AND ADVERTISE, THE CATTLE IMPOUNDED.

The Act of 1822, relating to Trespasses, (3 Geo. 4, c. 32, 3 P. L. 137,) enacts, "That if any damage shall be done by breaking any enclosure, and destroying the product thereof, by any horses, sheep, goats, swine or neat cattle, it shall and may be lawful for the person or persons whose fence or fences shall have been so broken, and whose enclosures shall have received such damage, to cause the said horses, sheep, goats, swine or neat cattle, to be impounded until the owner or owners of such cattle, so trespassing, shall claim the same; and the keeper shall cause the same to be cried or advertised in three of the most public places in the Township or Settlement wherein the trespass shall be committed, *as soon as may be*," in order that the person so injured may proceed against the owner of the cattle if he refuses to pay the damages, as is directed by the first Section of this Act. See title "Fence Viewers," p. 163.

**3. TO FEED THE CATTLE IMPOUNDED ; AND SELL
THEM IF THE OWNER DOES NOT PAY
THE DAMAGES AND EXPENSES.**

The 4th Section of the same Act also directs—that the owner of cattle so impounded, shall pay the Pound Keeper, “*for the support of the same,*” over and above the damages which shall be adjudged to be done by them ; “and if the owners of such horses, sheep, goats or swine, or neat cattle, shall refuse to pay the same to the Keeper of the Pound, together with the charge of crying or advertising the same, within eight days after the same shall be impounded, the said horse or horses, neat cattle, sheep, goats or swine, shall be publicly sold, and the money arising from such sale, after deducting therefrom, the pay of the Keeper for supporting them, and the damages done by the horse or horses, neat cattle, sheep, goats or swine, the remainder shall be paid to the owner, and if no owner shall appear within thirty days, then to the Overseers of the Poor for the Township or Settlement wherein the Trespass has been committed.”

The law relative to rescue and pound-breach.

By the 5th Section of the said Act, if any person shall rescue any Cattle, from a Hogreave, or any other person, driving them to the Pound, he “shall forfeit and pay for such rescue, the sum of twenty shillings,” besides all damages sustained by the trespass of such cattle. The penalty to be re-

covered by the oath of one credible witness, before any one of His Majesty's Justices; and levied by Warrant of Distress, and sale of the offender's goods and chattels; "and if any person or persons shall make any breach of the said Pound, or shall, by any other indirect means, deliver any swine, horses, sheep, goats, or neat cattle, out of the same, the person or persons so offending, being duly convicted thereof before any two of H. M. Justices of the Peace, shall forfeit and pay the sum of five pounds, to be levied as aforesaid; and the said penalties for every rescue and pound-breach, shall be paid to the Overseers of the Poor," for the use of the Poor of the Township, after deducting the charges of repairing any such breach of the Pound.

And by the Act of 1833, 3 Wm. 4, c. 3, sec. 1, 4 P. L. 193, persons so convicted of rescuing cattle, or breaking the Pound, or letting out any animal, for want of sufficient goods and chattels to satisfy the amount of the said Warrants of Distress, with the fees thereon, shall be committed to Gaol until they pay the same, or be discharged by order of the Justices. But the 2d Section of this Act authorises the Justices to discharge such offenders from Gaol, if it appears that they are wholly unable to pay such amount and fees, and have not been guilty of any fraud to escape payment thereof.

III. THEIR LIABILITIES.

1. FOR NOT ACCEPTING OFFICE.

If any person, who has been regularly appointed a Pound Keeper, refuses to accept the office, he will be liable to a penalty of forty shillings. To be recovered before any two Justices; levied by Warrant of Distress; and applied to the use of the Poor. 5 Geo. 1, c 1, sec. 1, 1 P. L. 107.

2. FOR NEGLECT OF DUTY.

If any Pound Keeper is guilty of any neglect, or misbehaviour, in the execution of the duty of his office, he will also be liable to a penalty of forty shillings. To be recovered and applied as the last. Same Act, &c.

IV. THEIR PRIVILEGES.

When cattle have been impounded for doing damage, the Pound Keeper is entitled to receive from the owner, "for the support of the same, for each and every day the same shall have been impounded, one shilling for every horse and head of neat cattle, and six pence for every sheep, goat or swine." If the owner refuses to pay the same together with the expense of crying or advertising, within eight days after impounding, the keeper may sell them, as before mentioned. p. 170.

CHAPTER XI.

INSPECTORS AND REPACKERS OF BEEF AND PORK FOR EXPORTATION.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To inspect and repack Beef and Pork intended for exportation ; and herein,—1. *The size and description of Pork Barrels.*—2. *The different qualities of Pork.* 3. *The quantity of salt to be used for Pork.*—4. *The brands and marks for Pork.*—5. *The size and description of Beef Barrels.*—6. *The different qualities of Beef ; and the brand and marks to be used for it.*—7. *The quantity of salt for Beef.*—8. *The size, brands, and marks of half-barrels of Beef.*—9. *The manner of salting and branding Beef and Pork.* 10. *The penalties for shifting or intermixing Beef or Pork repacked and branded.*—11. *The penalties for exporting Beef or Pork not inspected.* 3. To search for and seize Beef or Pork intended for exportation without

being inspected. — *Penalty for obstructing such search.*

III. THEIR LIABILITIES.

For misconduct or neglect of duty.

IV. THEIR PRIVILEGES.

Compensation for services.

CHAPTER XI.

INSPECTORS AND REPACKERS OF BEEF AND PORK FOR EXPORTATION.

1. THEIR APPOINTMENT.

The Act of 1830, 11 Geo. 4, c. 6, sec. 1, 4 P. L. 76,* directs that the Grand Jurors, at the General Sessions of the Peace in each County, wherein, by Law, Town Officers are to be appointed, shall nominate out of every Township, "four fit persons, out of whom the said Court of Sessions shall appoint two, to be Inspectors and Repackers of Beef and Pork, intended for exportation, which Inspectors and Repackers shall hold and exercise their said office, for and during the year succeeding their nomination and appointment, and until others shall be appointed in their stead."

* This Act is perpetual.

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The same Section directs that the said Inspectors and Repackers "shall, within eight days after notice of their appointment, and before they enter upon the execution of their office, take the following oath before some Justice of the Peace, for the County wherein they reside, viz :—

I, A. B. do swear that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform, the office and duty of an Inspector and Examiner of Beef and Pork, according to the true intent and meaning of the laws of this Province, relative to the same."

2. TO INSPECT AND REPACK BEEF AND PORK INTENDED FOR EXPORTATION.

Under this head will be shewn :

1. *The size and description of Pork Barrels.*

The 2d Section of the same Act requires that "every Barrel or half Barrel, in which pork shall be packed or re-packed, shall be made of good seasoned white Ash, or white Oak Staves and Heading, free from sap, and every defect ; and each Barrel shall contain two Hundred Pound's weight of Pork, and shall be of not less guage than twenty-

seven, nor more than twenty-eight gallons ; and each half-barrel shall contain one Hundred Pounds' weight of Pork, and shall not be of less gauge than fourteen, or more than fifteen Gallons : the Barrels to measure sixteen inches between the chimes, and to be twenty-eight inches long ; to be hooped with two iron hoops at the least, and fourteen Ash, Oak, or Hickory hoops ; the heads to be made of good thick stuff, and the hoops to be well set and drove ; the half-barrels to be hooped in the same manner as the whole Barrels."

2. *The different qualities of Pork.*

The 4th Section enacts, "That the Inspectors and Repackers, so to be appointed, shall examine and sort all Pork and Beef to be by them repacked, in the following manner : there shall be three qualities of Pork known and distinguished by the names of Mess, Prime, and Cargo ; that Mess Pork shall consist of the rib pieces of good fat Hogs only ; Prime Pork shall consist of the next best pieces with not more than three shoulders in one Barrel, and the said Barrel shall contain no legs, and no more than twenty pounds of heads, from which the ears and snouts above the tusks shall be cut off, and the brains and bloody grizzel taken from out of the heads ; and the third quality of Pork shall be nominated Cargo Pork, of which there shall not be more in one Barrel than four shoulders, without the legs as aforesaid, and not more than two heads with the ears and snouts cut off, and brains and bloody grizzel taken out as a-

foresaid, which heads shall not exceed twenty-five pounds' weight, and shall be otherwise fat merchantable Pork ; and every half-barrel of Mess, Prime, or Cargo Pork, shall contain one half of the quantity of different kinds and qualities of Pork of a whole Barrel ; and the Pork so to be packed shall be cut in pieces as nearly square as may be ; provided that the Mess Pork shall be cut as nearly as possible in pieces of four pounds' weight, and Prime and Cargo Pork shall not exceed twelve or be under four pounds' weight."

3. The quantity of salt to be used for Pork.

The 4th Section also directs, that "there shall not be less than half a bushel of coarse salt used in the packing of a barrel, one peck in the packing of half a barrel, which shall be Turks' Island, Bahama Island, or St. Ube's salt, and there shall not be less than three ounces of salt petre used to each barrel of Pork, or less than one ounce and one half of an ounce used to each half-barrel of Pork."

4. The brands and marks for Pork.

The 7th Section requires, "That every Inspector or Repacker shall brand upon each barrel of Mess Pork, which shall contain two hundred pounds' weight of Pork as aforesaid, the figures 200, and the words Mess Pork ; and upon each barrel of Prime Pork, shall, in like manner, be branded by the said Inspector, the words Prime Pork, together with the figures 200 ; and, upon every barrel of

Cargo Pork the words Cargo Pork, with the figures 200; and the half-barrels of Mess, Prime and Cargo Pork, shall be branded in like manner, excepting only that the figures 100 shall be branded on such half-barrels instead of the figures 200."

5. The size and description of Beef Barrels.

The 3d Section enacts, "That every Barrel, in which Beef shall be packed, shall be in all respects the same as the Barrels in which Pork shall be packed, except that the Barrel in which Beef shall be packed may contain thirty gallons."

6. The different qualities of Beef; and the brands and marks to be used for it.

The 5th Section enacts, "That the Beef, to be by the said Inspectors repacked, shall be such as is well fattened, and in every other respect fit for exportation, and the same shall be repacked into barrels and half-barrels in the following manner, that is to say: such Beef as is large and fat, without either hocks, shins, or neck pieces, shall be sorted by itself, and on one of the heads of all Barrels containing Beef of this quality shall be branded the words Mess Beef; and such Beef as is not of the very first quality shall be sorted and repacked by itself, and on one of the heads of all barrels containing Beef of this quality shall be branded the words Prime Beef; in each of which barrels of Prime Beef there shall be at least one Round, and not more than two hocks or shins, and one half of the neck, and shall be good and well-fattened Beef;

and such as is inferior or third quality of Beef shall, in like manner, be sorted, and repacked by itself, and on one of the heads all barrels containing Beef of this quality, shall be branded the words Cargo Beef, which shall not contain more than three hocks or shins, and one half of the neck in each such last mentioned barrel; and further that every Barrel, in which any kind of Beef shall be so repacked as aforesaid, shall contain two hundred neat pounds of such Beef, and the figures 200 shall be branded on one of the heads of each and every such barrel."

7. The quantity of Salt for Beef.

The 5th Section also requires, that "each Barrel of Beef shall contain one peck and one half peck of Turk's Island, St. Ubes, or Bahama Island salt, and three ounces of salt petre at the least."

8. The size, brands and marks of half-barrels of Beef.

The 6th Section directs, "That every half-barrel, in which Beef shall be repacked by virtue of this Act, shall be made of the same materials, and in the same manner, as half barrels in which Pork shall be repacked as aforesaid, and contain one hundred neat pounds of Beef, and on one of the heads of every such half-barrel of Beef shall be branded the figures 100, and, in other respects, be assorted and branded, and shall be under the same rules and restrictions as full barrels of Beef are herein before directed to be."

9. *The manner of salting and branding Beef and Pork.*

The 8th Section enacts, "That no Beef or Pork shall be repacked until the same has been laid in salt not less than fourteen days before such repacking; and all casks of Beef and Pork so repacked shall be branded with the name of the Inspector or Repacker at full length, together with the name of the place where the same shall have been repacked; and every Inspector and Repacker of Beef and Pork shall carefully secure such his marking Irons so as to put it out of the power of his servants or others to obtain and make use of the same, contrary to the true intent and meaning of this Act."

10. *The penalties for shifting or intermixing Beef or Pork repacked and branded.*

The 10th Section enacts, "That if any person or persons shall, at any time hereafter, intermix, take out or shift, any beef or pork, that has been repacked and branded as aforesaid, and shall export, and lade on board of any vessel for exportation, such beef or pork, so intermixed, taken out or shifted, every person so taking out, intermixing and fraudulently shifting, such Beef or Pork, shall, on conviction thereof, forfeit and pay the sum of fifty pounds, to be applied to the use and benefit of the Informer or Informers."

11. *The penalties for exporting Beef or Pork not inspected.*

The 12th Section imposes the following penalties for exporting Beef or Pork, not inspected according to the Act; namely—for every Barrel of Beef or Pork, so exported or shipped for exportation, “the owner thereof shall forfeit and pay for every such barrel, the sum of two pounds; and the master of every vessel having the same on board, shall forfeit and pay for every barrel twenty shillings.”

3. TO SEARCH FOR, AND SEIZE, BEEF OR PORK SHIPPED FOR EXPORTATION, WITHOUT BEING INSPECTED.

The 12th Section also authorises the Inspectors, “on suspicion that any Beef or Pork, not inspected as aforesaid, shall be shipped in any vessel for exportation, to apply to any Justice of the Peace, and, on oath, to assign to such Justice the causes of such suspicion, and if the said Justice shall think the suspicion well-grounded he shall issue his Warrant to the said Inspector or Inspectors to enter on board any vessel whatever, laden or loading, in any port within this Province, and to search for, and make discovery of, any Beef or Pork shipped on board of any such vessel for exportation out of this Province; and if any of the said Inspectors shall discover any Beef or Pork, not repacked or branded as directed in and by this Act, on board of any such vessel, such Inspector shall apply to

such Justice of the Peace, who is hereby authorised and required to issue his Warrant, directed to the Sheriff, his Deputy, or any of the Constables of the County wherein such vessel is laden or loading as aforesaid, commanding him or them to enter on board every such vessel, having on board such uninspected Beef or Pork, and cause the same to be relanded and delivered to the owner or owners thereof, upon his or their paying all reasonable and lawful expences for the aforesaid warrant, search and relanding ;" that is, at the expense of the owner of the Beef or Pork.

Penalty for obstructing such search.

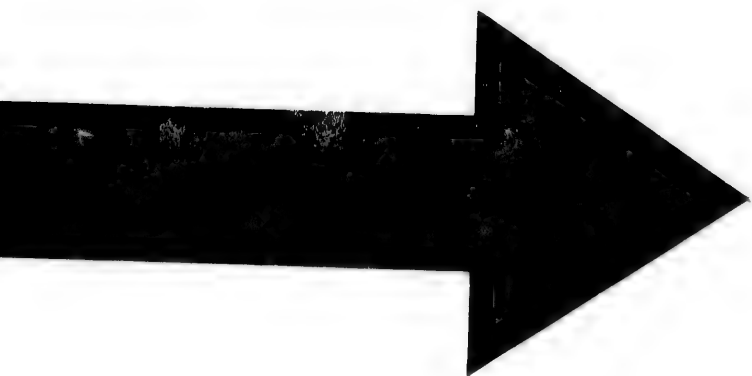
The 12th Section also enacts, that " If any person or persons shall obstruct or prevent any Inspector from making such search as aforesaid, or any Peace Officer in relanding such Beef or Pork, each and every person so offending shall forfeit and pay the sum of fifty pounds, to be paid to the Overseers of the Poor for the Township wherein such offence is committed, the same to be recovered on the oath of the Inspector or Peace Officer."

III. THEIR LIABILITIES.

FOR MISCONDUCT OR NEGLECT OF DUTY.

The 11th Section directs, " That if any Inspector or Repacker, hereafter to be appointed by virtue of this Act, shall inspect, repack or brand, any





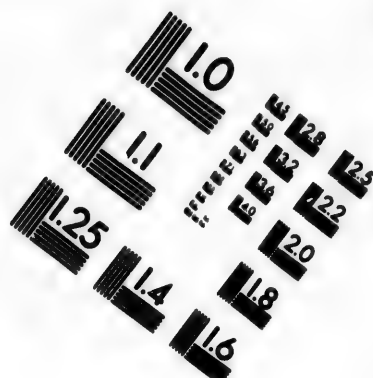
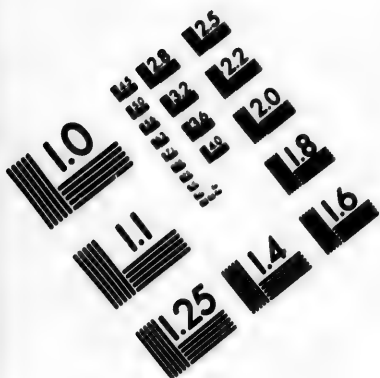
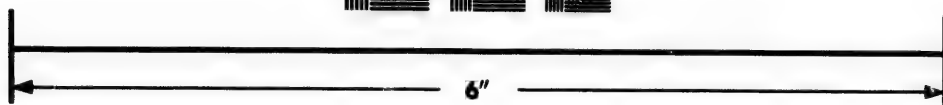
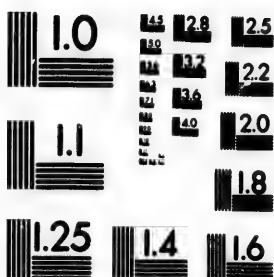


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barrel or half-barrel of Beef or Pork, in any manner or form contrary to the true intent and meaning of this Act, or shall in any other manner offend against the true intent and meaning thereof, such Inspector and Repacker shall forfeit for every offence the sum of two pounds: the one half of which shall be applied to the use of the Poor of the Township wherein the offence is committed, and the other half to be paid to the person or persons informing."

IV. THEIR PRIVILEGES.

COMPENSATION FOR SERVICES.

The 9th Section enacts, "That the Inspectors and Repackers shall receive, and be paid, for inspecting and repacking, after the rates following, that is to say for inspecting and repacking each barrel, one shilling; and for each half-barrel, seven pence half-penny; for each hoop wanting, and put on by the Inspector and Repacker, two pence, and for flagging, nailing, pegging, and pickling, each barrel, seven pence half-penny; and each half barrel, five pence—the owner of the Beef and Pork furnishing or paying for the salt."

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CHAPTER XII.

INSPECTORS AND WEAIGHERS OF BEEF.

I. THEIR APPOINTMENT.

The Act of 1829, 10 Geo. 4, c. 17, sec. 1, 4 P. L. 47, requires that the Grand Jury, at the first sitting of the Court of General Sessions of the Peace in every year, "shall nominate five or more fit and proper persons in each and every Township within their respective Counties and Districts, out of whom the said Court shall appoint two or more for the purpose of Inspecting and Weighing Beef, as hereinafter mentioned." (This is an annual Act.)

II. THEIR DUTIES.

The 2d section of the same Act directs, "That whenever any Cattle, from and after the appointment of such officers, in any Township within the

Province, shall be sold at a stated price to the Butcher, by the Pound or Hundredweight, and shall be slaughtered in such Township, one of the said Officers, to be named by the Seller, if required, shall be employed within twenty four hours after the same have been killed, to inspect and weigh the Beef of such Cattle, who shall ascertain the just and true weight thereof, by weights duly assayed and stamped according to Law ; * and also by deducting, at his discretion, what he shall deem to be a fair allowance for any bruises that may have been sustained by such Cattle, or adding to the several quarters of such Beef, what may appear to him to be a reasonable and fair addition to the weight of such of the said quarters, as shall or may in his opinion have been improperly trimmed off, and reduced in weight, by the Purchaser."

The 4th Section imposes a fine of twenty shillings a-head on any Butcher who shall not employ an Inspector "to inspect and weigh the Beef of all cattle purchased and slaughtered by him as

* The Act of 1758, 32 Geo. 2, c. 2, 1 P. L. 32, sec. 1, directs, " That all weights and measures used in this Province, shall be according to the standard of the Exchequer of England." And that the Clerks of the Market of each town, shall keep a set of assay weights, according to such standard. The 2d Section requires the said clerks to assay, and brand or stamp, with the initial letters of the town, all the weights and measures used in selling any commodity. And the 3d Section imposes a penalty of £10 on any person convicted of selling by weights and measures less than the established standard.

aforesaid." To be recovered before any one Justice of the Peace; and applied, one half to the prosecutor, the other half to the Poor.

III. THEIR LIABILITIES.

The Act does not expressly impose any penalty on the Inspectors and Weighers of Beef. Nevertheless, if they refuse to accept the office, when regularly appointed, or neglect to discharge their duty, as directed by the Act, they will be liable to be indicted for a *misdemeanor*, and punished at the discretion of the Court.

IV. THEIR PRIVILEGES.

The 3d Section directs that the Inspectors shall receive from the Seller of the Cattle, "at the rate of nine pence for every Carcase by him inspected and weighed; when not more than two, and when three or more are inspected and weighed, at one and the same time, he shall only receive at the rate of six pence for every such carcase."

CHAPTER XIII.

INSPECTORS AND MEASURERS OF GRAIN, SALT, COALS, LIME, BRICKS, & FREE-STONE.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office. 2. To inspect and measure all grain, salt, coals, lime, and bricks, imported or offered for sale.—1. *The weight and measurement of Grain.*—2. *The size and inspection of Bricks.*—3. *The size of Hogsheads for Lime, its quality and inspection.*—4. *Bricks and Lime seized.* 5. To inspect Free-Stone.

III. THEIR LIABILITIES.

1. For refusing to accept office, or neglecting their duty. 2. For measuring from more than one vessel at a time.

IV. THEIR PRIVILEGES.

Compensation for services :—1. *For measuring Grain, Salt, and Coals.*—2. *For inspecting and measuring Bricks and Lime.*—3. *For inspecting and measuring Free-Stone.*

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CHAPTER XIII.

INSPECTORS AND MEASURERS OF GRAIN, SALT, COALS, LIME, AND BRICKS.

I. THEIR APPOINTMENT.

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These officers are to be nominated and appointed annually, by the Grand Jury, and the Court of General Sessions of the Peace, at such Term, and in such number, as the Justices shall direct; "for the purpose of measuring all species of corn or grain, salt, coals, and lime, and for inspecting all bricks, which shall be offered for sale, and sold, within their respective Townships." Act of 1792, 1 P. L. 291: see also "Constables"—"Their appointment," c. 1, p. 12, and the Act of 1811, there mentioned.

The Act of 1816, 56 Geo. 3, c. 21, sec. 7, 2 P. L. 210, directs that the officers appointed for the inspection and measurement of Bricks and Lime, shall be inspectors and measurers of Free-Stone.

II. THEIR DUTIES.

1. TO BE SWORN INTO OFFICE.

The 6th Section of the Act of 1792 requires, "that the officers so appointed, shall be respectively sworn to the faithful discharge of their duty."

2. TO INSPECT AND MEASURE ALL GRAIN, SALT, COALS, LIME, AND BRICKS, IMPORTED, OR OFFERED FOR SALE.

I. The 2d Section, Act of 1792, requires that all grain, "imported or brought to market for sale, shall be, on request of the purchaser, inspected and measured by the sworn inspectors of such town or port, where the same shall be brought for sale."

II. The 6th Section enacts, "That all salt, coals, and lime, exposed to sale in any part of this Province, shall be measured; and all bricks shall be inspected by the officers appointed for that purpose."

III. The 5th Section of the Act of 1816, 56 Geo. 3, c. 4, 2 P. L. 200, directs, "that all coal, salt, and grain, delivered from any ship or vessel, to any truckman, or any other person, without having been duly and regularly admeasured by the proper officer appointed by the Court of Sessions, to survey the same, shall be forfeited, or the value

thereof, by the seller thereof, to and for the use of the Poor of the Township."

Under this head will be shewn:

1. *The weight and measurement of grain.*

By the 2d Section, Act 1792, "all grain exposed to sale, shall not be deemed merchantable, unless it be of the following standard weight ;"

Wheat	shall weigh per bushel,	58 lbs.	} <i>Standard weight.</i>
Rye	do. do.	56 lbs.	
Indian Corn	do. do.	58 lbs.	
Barley	do. do.	48 lbs.	
Oats	do. do.	34 lbs.	
Pease	do. do.	60 lbs.	

The 3d Section directs, that if any kind of corn or grain imported, shall not be merchantable, agreeable to the above standard weight, the inspector or measurer may, if required, either by the buyer or seller, add to each bushel, a quantity sufficient to make it weigh, equal to the said standard ; and if it weigh more, he may deduct, from each bushel, sufficient to make it the standard weight.

The 4th Section imposes a penalty of one shilling a bushel, on any person exporting out of the Province, any kind of grain, weighing less than the standard weight, or not inspected and measured by the proper persons appointed for that purpose.

The Act of 1786, 1 P. L. 273, requires, that "the measure with which grain is sold, shall be struck with a strait board or stick, rounded at the edges, and with no other," under the penalty of twenty-shillings, for every hundred-weight.

2. *The size and inspection of bricks.*

The Act of 1816, sec.1, 2 P. L. 209, directs, that all bricks made in this Province for sale, or sold therein, shall be of the sizes and dimensions following, that is to say : " those of the larger size shall be nine inches in length, four inches and three eighths of an inch in width, and two inches and one half of an inch in thickness ; and those of the smaller size shall be eight inches and one quarter of an inch in length, four inches in width, and two inches in thickness."

The 2d Section enacts, " That all bricks sold, or offered for sale, as aforesaid, shall be inspected by the officer or officers, or one of them, appointed for that purpose, and all such bricks of any other or different dimensions than is herein provided, shall be seized by the said Inspector, unless their actual size and dimensions shall have been declared by the owner or seller thereof at the time the same were sold, or offered for sale, and so sold and offered for sale, as and for bricks of such their actual size and dimensions. And all bricks, inspected as aforesaid, that shall not be well burnt, or otherwise be good and merchantable, shall be seized as aforesaid, unless the same shall have been sold, or offered for sale, as inferior or refuse bricks."

3. *The size of Hogsheads for Lime, its quality and inspection.*

The 6th Section, Act of 1792, requires that every hogshead of lime " shall contain eight Winchester bushels, heaped, at the least, or ninety six gallons."

The 3d Section, Act of 1816, 2 P. L. 210, directs, that all Lime sold, or offered for sale, "shall be measured and inspected, by the officer or officers, or one of them appointed for that purpose, and all Lime not sufficiently burnt, or otherwise of good and merchantable quality, shall be seized by the said inspector, and every person offering for sale, or selling by the hogshead, any Lime in hogheads, that shall not contain at the least eight Winchester bushels heaped, or ninety-six gallons, shall forfeit for every bushel of which every and each hogshead shall be deficient, the sum of ten shillings, and so in proportion for every part of a bushel, together with the hogshead or cask in which such lime shall be contained, which shall be seized by the said Inspector and destroyed."

4. Bricks and Lime seized.

The 5th Section of the same Act directs, that if the bricks and lime, so seized, shall not exceed 2000 bricks, or 32 bushels of lime, and if the deficiency of lime sold in hogheads, shall not exceed 20 bushels, the same shall be adjudged forfeited, upon conviction, on the oath of one witness, or more, *before one Justice of the Peace*; and if the bricks and lime, so seized, shall exceed 2000 bricks, or 32 bushels of lime, and if such deficiency of lime, shall exceed 20 bushels, the same shall be adjudged forfeited, upon conviction, as aforesaid, *in any Court of Record*; and the persons so selling, and offering the same for sale, shall pay all the costs of prosecution, and condemnation, and the penalty

before mentioned for deficient hogsheads ; one half of all the penalties and forfeitures, to go to the inspector employed, the remainder to the Poor.

5. To inspect Free-Stone.

The 7th Section of the last Act, requires that all Free-stone sold, or offered for sale, " shall be inspected and measured by the officer or officers appointed for the inspection and measurement of bricks and lime."

III. THEIR LIABILITIES.

1. FOR REFUSING TO ACCEPT OFFICE OR NEGLECTING THEIR DUTY.

The 6th Section of the Act of 1792, directs that the persons appointed as Inspectors and Measurers of grain, salt, coals, lime, and bricks, " upon refusal to accept of said offices, or being guilty of any neglect, or misbehaviour, in the execution of the duties thereof, shall forfeit and pay, for the use of the poor in the town wherein they reside, a sum not exceeding three pounds, to be recovered before any two of His Majesty's Justices of the Peace, for the same county."

2. FOR MEASURING FROM MORE THAN ONE VESSEL AT A TIME.

The 6th Section of the Act of 1816, 2 P. L.

200, enacts, "That each and every Measurer of coal, salt, and grain, who shall undertake to attend the admeasurement of either, or any of the aforesaid articles, from more than one vessel at one and the same time, shall forfeit for each and every such offence, the sum of forty shillings, to be recovered before any one of His Majesty's Justices of the Peace, by Warrant of Distress, and to be applied for County purposes."

IV. THEIR PRIVILEGES.

COMPENSATION FOR SERVICES.

1. *For measuring Grain, Salt, and Coals.*

The 7th Section of the last Act directs, "that the Measurer of grain shall receive for all grain (oats excepted) at the rate of four shillings per hundred bushels; and for oats two shillings per hundred bushels; and the Measurer of salt, for every hogshead of salt, two pence; and the Measurer of coals, for every chaldron of coals, six pence, to be paid by the seller of the aforesaid articles."

2. *For inspecting and measuring Bricks and Lime.*

The 4th Section of the Act of 1816, 56 Geo. 3, c. 21, sec. 4, 2 P. L. 210, enacts, "That for every thousand of bricks actually inspected, the person who shall inspect the same shall receive

from the seller thereof nine pence, and so in proportion for any smaller number ; and for every hogshead of lime actually inspected and measured, the person who shall inspect and measure the same shall receive from the seller thereof six pence, and so in proportion for any less quantity."

By the 5th Section they are entitled to one half of the penalties recovered from persons selling lime in hogsheads deficient in quantity, and to one half of the lime and bricks, seized and condemned, as not merchantable, for "their trouble and expense of storage and prosecution." See p. 193, 194.

3. *For inspecting and measuring Free-Stone.*

The 7th Section directs, that the Inspector shall receive from the owner or seller of Free-stone, for his services, at the following rates, that is to say : "for the inspection and measurement of all Free-stone, of the description called flag stones, nine pence per ton ; and of all other six pence per ton, and so in proportion for any less quantity."

CHAPTER XIV.

SURVEYERS AND WEAIGHERS OF HAY.

1. THEIR APPOINTMENT.

Surveyors and Weighers of Hay are appointed annually, by the Grand Jury, and the Court of Sessions, at such Term, and in such number, as the Justices shall direct. Act of 1777, 17 Geo. 3, c. 1, 1 P. L. 204, as altered by the Act of 1811.— See the appointment of Constables, chap. I, p. 12.

II. THEIR DUTIES.

The Surveyors and Weighers of Hay are, in the first place, required by the Act of 1777, to “be sworn to the faithful discharge of their duty, in manner as is prescribed by the Laws of this Province.” Sec. 1.

After being sworn into office, their duty consists

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in viewing and weighing Hay, when requested; and giving a just and true account of its quality and weight. Public Scales are, in many places, provided for the purpose of weighing loads of Hay, &c. brought to market; and are, in general, superintended by the weighers of Hay, according to the local regulations made respecting the same.

The Act of 1758, 33 Geo. 2, c. 6, sec. 1, 1 P. L. 50, directs that no provision or goods of any kind, *except Hay*, shall be sold by steelyards, under the penalty of twenty shillings for each offence.

The 2d Section authorises the Clerks of the Market to inspect all beams and scales, weights and measures, "and also the steelyards used for weighing hay, once in every three months, or oftener as they shall see cause;" and to assay and stamp the same, according to Law. See note p. 186.

III. THEIR LIABILITIES.

The Act of 1777 directs, that the like proceedings shall be had relative to the Surveyors and Weighers of Hay, as are directed to be observed concerning the Town Officers appointed by the Act of 1765, 1 P. L. 106. Therefore, upon their refusal to accept, or being guilty of any neglect, or misbehaviour in the execution of the duty of their office, "they shall forfeit and pay for the use of the poor of the said township, the sum of forty

shillings, for every such refusal, neglect, or misbehaviour ;" to be recovered before any two Justices, and levied by Warrant of Distress. Sec. 1.

IV. THEIR PRIVILEGES.

The 1st Section, Act of 1777, enacts—"That the Surveyors and Weighers of Hay shall be paid for their trouble in viewing and weighing of Hay, at the rate of one penny per hundred weight, and four pence per mile, travel, if such travel shall exceed one mile, to be paid by the seller."

CHAPTER XV.

SEALERS OF LEATHER.

I. THEIR APPOINTMENT.

Sealers of Leather are appointed by the Grand Jury and the Court of Sessions, in the same manner as Constables. See chap. I, p. 12.

They are also called Searchers, and Surveyors, of Leather.

II. THEIR DUTIES.

1. The Act of 1765, 5 Geo. 3, c. 1, 1 P. L. 106, requires that they shall be sworn to the faithful discharge of their duty in manner as is already prescribed by the laws of this Province, and shall in every respect conform to the said laws.

2. The Act of 1768, 8 & 6 Geo. 3, c. 4, sec. 1, 1 P. L. 148, directs that no tanner or other person, shall sell, or expose to sale, any leather tanned, curried, or otherwise dressed, or manufac-

tured within this Province, or imported from a neighbouring colony, till it is viewed, stamped, and marked, "*by the officer for that purpose to be appointed,*" on pain of forfeiting twenty shillings for every ox, bull, steer, or cow hide, and five shillings for every calf-skin so sold or offered to be sold.

3. The 2d Section enacts, "That every Surveyor appointed and sworn according to law, shall from time to time, view all such hides and skins as aforesaid, and shall stamp and mark all such as he shall find to be sufficiently tanned, curried, or otherwise dressed or manufactured; and if any such hides or skins shall have been manufactured within this Province, the same shall be stamped and marked with the first letter of the name of the town wherein they have been so manufactured,"—"and every such hide shall, at the time of being so surveyed and marked, be weighed also in presence of the Surveyor, and the weight thereof shall by him be marked on said hide."

4. The 3d Section imposes a fine of £10, on any person convicted of counterfeiting the stamp or mark required by this Act.

5. The Act of 1779, 19 Geo. 3, c. 3, sec. 1; 3 P. L. 214, enacts, "That the persons appointed Searchers and Sealers of Leather, shall view every hide or skin of any cattle, calves or sheep, either in the slaughter-house or at the tanners, before the same shall be delivered on sale, and if he shall find the same to be gashed, cut, split or flawed, there shall be an allowance made on the price thereof to the buyer, as shall appear to the said Searchers and Sealers of Leather to be just and equitable ;"

—and any butcher, or other person selling hides or skins without being so viewed, shall pay a fine of twenty shillings.

III. THEIR LIABILITIES.

Sealers of Leather are liable to a fine of forty shillings if they refuse to accept the office, or are guilty of any neglect or misbehaviour, in the execution of their duty ; to be recovered before any two Justices, levied by Warrant of Distress ; and applied to the use of the Poor. 1 P. L. 107.

IV. THEIR PRIVILEGES.

The 2d Section of the Act of 1768 directs that the Surveyors (or Searchers and Sealers) of Leather, shall be paid for their trouble in viewing and marking leather tanned, curried, dressed, or otherwise manufactured, at the following rates, that is to say, “for every ox, bull, steer or cow hide, three pence, and for every calf-skin, one penny.”

And the 2d Section, Act of 1779, enacts, that the said Searchers and Sealers of Leather shall be paid for their trouble in viewing hides or skins of cattle, calves, or sheep, either at the slaughter-house, or at the tanners, (as before mentioned in the first Section) at the following rates, that is to say, “for every ox, bull, steer or cow, hide, three pence, and for every calf or sheep skin, one penny, and three pence per mile travel, to be paid by the seller.”

CHAPTER XIV.

SURVEYORS OF TIMBER AND LUMBER.

CONTENTS:

I. THEIR APPOINTMENT.

II. THEIR DUTIES.

1. To be sworn into office; sec. 4. 2. To deliver the oath in writing and subscribed, to the Clerk of the Peace, together with their private mark; sec. 4. 3. To examine, inspect, and survey all Timber and Lumber, when requested; sec. 5. 4. To reject Timber and Lumber not made according to the Act, and refuse to pass any that is objectionable; ib. 5. To provide themselves with a copy of the Act; ib. 6. To furnish the buyer and seller each with a correct certified account in writing of the articles surveyed; ib. 7. To mark all Timber and Lumber surveyed; sec. 15. 8. To see that it is conformable to the provisions and directions of the Act; (sec. 5)—namely: 1. *Ton Timber, how to be made*; sec. 1. — 2. *The dimensions of Timber*; sec. 2. — 3. *Deals, their dimensions, and how to be made*; sec. 6. — 4. *Planks, their dimensions, how to be sawed*; sec. 7. — 5. *Merchantable Boards, Plank, and Scantling, how*

to be made, their dimensions ; sec. 8. — 6. Lathwood, how to be made and measured ; sec. 10. — 7. Shingles, how made, put up, and counted ; ib. — 8. Staves for hogsheads and barrels, how made and counted ; sec. 11. — 9. Refuse Timber and Lumber ; sec. 18.

III. THEIR LIABILITIES.

1. For certifying as merchantable, any Timber or Lumber, not according to the Act ; sec. 12. 2. For expense of second surveys, when their opinion is not confirmed by other Surveyors in cases of dispute ; sec. 5.

IV. THEIR PRIVILEGES.

1. Allowance for surveying Ton Timber ; sec. 3. 2. For measuring Deals, Planks, Scantling, Boards, Lathwood, Shingles, and Staves ; sec. 17. 3. By whom to be paid ; sec. 17. 4. Liberty to survey in every part of the County or District where appointed ; sec. 4. 5. For surveying refuse Timber and Lumber ; sec. 18.

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CHAPTER XVI.

SURVEYORS OF TIMBER AND LUMBER.

I. THEIR APPOINTMENT.

Surveyors of Timber and Lumber are appointed annually by the Grand Jury and the Court of Sessions, at such Term, and in such number, as the Justices may deem expedient. Act of 1765, 5 Geo. 3, c. 1, 1 P. L. 106, as altered by the Act of 1811, 51 Geo. 3, c. 24, 2 P. L. 79. See "Constables," Chap. 1, p. 12.

II. THEIR DUTIES—LIABILITIES—AND PRIVILEGES.

As the Duties, Liabilities, and Privileges of the Surveyors of Timber and Lumber, are all contained, and clearly expressed, in the new Act of 1835, 4 P. L. 376, which regulates the Survey of Timber and Lumber; and as the 5th Section requires that

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each Surveyor "shall provide himself with a copy," it will be inserted here at full length, instead of being abstracted, and arranged under different heads, in the order observed with respect to the other offices. The Surveyors who may be induced to take this Book, would, otherwise, be still under the necessity of providing themselves with a copy of the Act. But as the whole of it will be carefully and correctly copied and compared, it will answer both purposes.

The Act, "*of which each Surveyor shall provide himself with a copy,*" is as follows :

5 Wm. 4, c. 11, 4 P. L. 376, entitled "An Act to regulate the Survey of Timber and Lumber, and to repeal certain Acts now in force."

(*Passed the 19th day of February, 1835.*)

BE it enacted by the Lieutenant Governor, Council and Assembly, That from and after the first day of June next, after the passing of this Act, all hewed Timber, commonly called Ton Timber, which shall be exported from this Province, shall be straight lined and well squared, without offsets or joints, and square butted at both ends, and shall also be squared with not more than one inch of wane on the edges, and shall be free from all marks of scoring, rots, splits or worm holes, which may be detrimental to the same.

II. *And be it further enacted,* That no Spruce or Pine Timber shall be of less than sixteen feet in length, nor any Birch or other hardwood Ton Tim-

ber, less than ten feet in length, nor shall any Ton Timber be considered Merchantable unless the same shall square at least ten inches, and where the Timber does not exceed sixteen feet in length it shall be of equal bigness at both ends.

III. *And be it further enacted*, That the Surveyors of Lumber shall be entitled to receive three-pence per ton, for surveying Ton Timber with four-pence per mile for every mile they shall necessarily travel, in coming to the place for performing such duty, and shall, in all cases, measure Ton Timber by the girth, one quarter part of the girth to be taken as the side of the square.

IV. *And be it further enacted*, That every Surveyor of Lumber shall, before attempting to act as such, take and subscribe the following oath, before any one of His Majesty's Justices of the Peace, who is hereby authorised and required to administer the same without fee, that is to say : "I do solemnly swear that I will faithfully, impartially, truly, and to the best of my skill, knowledge and ability, execute, do and perform, the office and duty of a Surveyor of Lumber, according to the true intent and meaning of an Act, entitled, An Act to regulate the Survey of Timber and Lumber, and to repeal certain Acts now in force, and that I will give a true and faithful account of the number, dimensions and measurement of all such Timber or Lumber as may be submitted to my inspection and judgment, according to the best of my knowledge, and that I will not any time wilfully change any article of Lumber, that may be entrusted

ted to me for the purpose of being so surveyed ; ” —which oath, every such person shall deliver to the Clerk of the Peace for the County or District in which he shall be appointed, together with the private mark which he shall adopt, and the said Clerk of the Peace is hereby required to grant a Certificate to every such person of his having taken and subscribed the said oath, and the said persons thereafter shall continue in such office, until the annual appointment of Town Officers, and it shall be lawful for such Surveyors to survey Timber or Lumber in any part of the County or District in which they are appointed.

V. *And be it further enacted*, That it shall be the duty of all Surveyors of Lumber, appointed or hereafter appointed, personally and diligently to examine, inspect and survey, all Ton Timber and Lumber, of every kind and description, when called upon so to do, and to see that the same is, and shall be, in all respects conformable to the several provisions and directions of this Act, and every Surveyor shall reject any Timber or Lumber which shall in any respect be contrary to, or objectionable under, this Act, of which each Surveyor shall provide himself with a copy, and shall refuse to pass the same, and, after rejecting and refusing such objectionable Timber or Lumber, the said Surveyor shall furnish the Buyer or Seller each with a true and faithful account in writing of the number, dimensions and measurement, of the articles he shall have so surveyed, and find to be merchantable, and every such Account, duly certi-

fied under the hand of the Surveyor, shall be final and conclusive between the Buyer and Seller; *Provided always*, that if any dispute shall arise between the Buyer and Seller of any article of Timber or Lumber, the person dissatisfied may call upon three skilful and disinterested persons, being Surveyors of Lumber, regularly appointed and sworn, who shall re-survey and examine the said Timber or Lumber, and their determination or the determination of any two of them shall be final and conclusive, and if the opinion of the first Surveyor shall be confirmed, then the Buyer is to pay the expense of the second Survey, but if the same be not confirmed, the expense of such second Survey shall be borne and paid by the first Surveyor.

VI. *And be it further enacted*, That all dimension Deals shall be cut to the lengths of twelve, fourteen, sixteen, eighteen, twenty and twenty-one feet, and of the breadth of nine, eleven and twelve inches, to the thickness of three inches each, having an allowance of one inch, and not exceeding two inches on the length, of one fourth of an inch, and not exceeding one half of an inch on the breadth, of one eighth of an inch, and not exceeding one fourth of an inch on the thickness, to be sawed smooth and fair, of equal width and thickness at both ends, to be butted at both ends with a saw, and the stubshot to be sawn off, to be free from rots, sap-stains, large knots, rents, shakes, worm holes, wane and augur holes.

VII. *And be it further enacted*, That all Plank, intended for exportation out of this Province, save

and except hard wood Plank, shall be sawed at least three inches and one eighth of an inch in thickness, at least nine inches in width, and at least ten feet and not over twenty feet in length, and shall be in all other respects the same as is herein before prescribed and directed with respect to dimension Deals.

VIII. *And be it further enacted*, That all merchantable Boards, Plank and Scantling, save and except such as may be what is commonly called Hard wood, shall be square-edged with the saw—all clear Boards shall not be less than one inch thick, and merchantable Boards not less than seven eighths of an inch thick : no Board or Plank shall be deemed merchantable if split at both ends, or have one continued split of more than two feet at any one end, nor shall any Board be deemed merchantable which is less than twelve feet in length, and nine inches in width, and which is not sawed of equal thickness throughout, or which is not free from rots, sap-stains, large knots, rents, shakes, worm holes, wane and augur holes.

IX. *And be it further enacted*, That no person agreeing for or purchasing Boards, shall be obliged or required to take or receive any Planks, with, or as part of, such Boards, unless there shall have been a special agreement previously made to that effect.

X. *And be it further enacted*, That all Lath wood shall be of fresh growth, straight rift, free from bark, hearts and knots, to be measured by the Cord of four feet high and eight feet long, and

piled as close as it can be laid; all Pine Shingles shall be eighteen inches long, not less than four inches wide, and three eighths of an inch thick at the butt, free from sap and worm holes, to be put up in bundles not less than twenty-five tier or courses to twenty inches wide; four of which bundles shall be reckoned a thousand; Shipping Shingles for exportation shall be half an inch thick at the butt; the said thickness to be continued three fourths of the length, and shaved from thence to the point, and shall also be from four to four and one half inches wide throughout, and that the account shall be taken by the tale of ten hundred to the thousand, and all Pine Shingles, manufactured in the same manner, shall be subject to the like rules and regulations.

XI. *And be it further enacted*, That all Hogshead Staves shall be forty two inches long, three fourths of an inch thick on the thinnest edge, and not exceeding one inch on the back, and shall also be from three and one half inches to five and one half inches wide, and all barrel Staves, shall be thirty-two inches long, one half inch thick on the thinnest edge, and not exceeding three fourths of an inch on the back, the whole to be of good rift, free of twists, fairly split, and free from knot holes, rotten knots, worm holes and shakes, and the account shall be taken by the tale of twelve hundred to the thousand.

XII. *And be it further enacted*, That if any Surveyor of Lumber, after the first day of June next, shall certify as merchantable for exportation

any Ton Timber, or any article of Lumber contrary to any or either of the provisions of this Act, he shall forfeit and pay for each and every such offence a sum not less than Two Pounds nor more than Five Pounds.

XIII. *And be it further enacted*, That if any person or persons shall, after the first day of June next, ship or export out of this Province, as merchantable, any Ton Timber, or any article or description of Lumber, herein mentioned and directed to be surveyed, which shall not have been regularly surveyed by a sworn Surveyor, and by him certified as merchantable and fit for exportation, he or they shall forfeit and pay for each and every offence the sum of Ten Pounds.

XIV. *And be it further enacted*, That when any Contract or Bargain shall be made for any quantity of Timber or Lumber, of any description hereinbefore mentioned for exportation, the same shall be understood to be for Timber or Lumber, according to the directions and provisions of this Act, and no person shall be obliged to take or receive any other kind of Timber or Lumber, unless such person shall have previously made a special agreement in writing for the same, specifying particularly the nature, dimensions and description, of Timber or Lumber agreed to be received.

XV. *And be it further enacted*, That every Surveyor of Lumber, who shall be required to survey any Timber or Lumber, shall, at the time of making the survey of the same, mark in figures on each and every stick of Ton Timber by him surveyed,

the exact number of cubic feet such stick shall contain, together with the initial letters of his own name, and that of the private mark of the Purchaser; and on all Deals and Plank every Surveyor shall mark with lead on the end, the length, breadth, thickness and superficial contents thereof respectively, and also the Surveyor's private mark, and all Boards every such Surveyor shall mark with the superficial contents thereof respectively, and with the said Surveyor's private mark.

XVI. *And be it further enacted*, That if any person shall cut, deface or otherwise destroy, any marks so to be made on any stick of Ton Timber, or upon any Deals, Planks or Boards, respectively, without the knowledge or permission of the Owner thereof, every such person so offending shall forfeit and pay for every such offence, a sum not exceeding twenty shillings, nor less than ten shillings.

XVII. *And be it further enacted*, That every Surveyor of Lumber shall be entitled to ask, demand and receive, for his labour and trouble in surveying the several articles following, the sums hereinafter mentioned and prescribed, that is to say, for surveying and measuring all or any Deals, Planks, Scantling and Boards, nine-pence, for every thousand superficial feet thereof, and the further sum of three-pence, for every thousand superficial feet thereof, for marking the same, and for all or any Lathwood, six-pence per Cord, and for all or any Shingles, three-pence per thousand, and for all or any Hogshead Staves, one shilling

and six pence for each and every thousand thereof, according to the tale thereof respectively, and for all or any Barrel Staves, nine-pence, for each and every thousand thereof, according to the tale thereof respectively, which rates, for the Survey of Merchantable Lumber, as well as for those herein before prescribed, for surveying Merchantable Timber, shall be paid by the Seller, who shall employ or have the choice of the Surveyor, and the Seller shall remove, or cause to be removed, at his own expense, whatever may obstruct or prevent the Surveyor from ascertaining, with facility, the measurement, manufacture, or quality, of any article of Lumber or Timber, and when required the same shall be canted: *provided always*, that no Purchaser of any article of Lumber or Timber who shall purchase the same after it has been surveyed, shall be required to pay for the expense of survey, unless such Purchaser shall require a new survey thereof, or shall have made a special agreement for the payment of such expense.

XVIII. *And be it further enacted*, That the Surveyor shall mark all Timber and articles which do not correspond with the provisions of this Act, as refuse, and for such Survey and marking shall be entitled to the same fees as he is by this Act entitled, for Surveying and marking articles which he may find Merchantable.

XIX. *And be it further enacted*, That all Fines and Forfeitures hereby imposed shall be recoverable and recovered, together with Costs of Suit, before any two of His Majesty's Justices of the Peace,

of the County or District wherein the offence shall have been committed, at the suit of any person who will sue for the same, in the same manner, and by the same means, as if the same were or was a private debt or debts, and shall be paid and applied, one half to the use of the Poor of the Town or place where such offence shall have been committed, and the other half to the person who will sue for the same.

XX. *And be it further enacted*, That all prosecutions under this Act shall be commenced within Twelve Months from and after the time such offence shall have been committed.

XXI. *And be it further enacted*, That this Act shall be publicly read by the Clerk of the Peace, annually, at the opening of the Court of General Sessions of the Peace, at which the appointment of Town Officers is by Law directed to be made.

XXII. *And be it further enacted*, That the Act, passed in the Fifty-fourth year of the Reign of His late Majesty King George the Third, entitled, An Act to regulate the exportation of Ton Timber, and to repeal two Acts, made in the twelfth and thirty-third years of His Majesty's Reign, declaring what shall be deemed Merchantable Timber for exportation to Great Britain; also, the Act, passed in the seventh year of the Reign of His late Majesty King George the Fourth, in addition to the said Act, except so far as the said Acts, or either of the said Acts, repeal any Acts or Laws therein mentioned, shall be, after the 1st day of June next, and the said Acts, except as aforesaid,

and every matter, clause and thing, therein contained, are hereby severally and respectively repealed after that day.

XXIII. *And be it further enacted,* That this Act shall continue and be in force for Three Years, from the first day of June next, and from thence to the end of the then next Session of the General Assembly.

The foregoing is the whole of this Act, which will be in force until the first day of June 1838, and from that time to the end of the then next Session of the Legislature, when it will likely be further continued.

As the Surveyors of Timber and Lumber are appointed under the Act of 1765, 5 Geo. 3, c. 1, they will be liable to a fine of forty shillings, if they refuse to accept the office, or are guilty of any neglect or misbehaviour, in the execution of their duty; to be recovered before any two Justices, levied by Warrant of distress; and applied to the use of the Poor. Sec. 1, 1 P. L. 107.

ADDENDA.

[Overseers of the Poor, p. 63.]

The Act of 1836, 6 Wm. 4, c. 39, sec. 4, directs that, in the Township of Pictou, it shall be the duty of the Treasurer "to summon and call, in manner as the Overseers are now required to do, the Meetings of the Freeholders and Inhabitants of such Township, to vote and assess money for the support of the Poor."

[Surveyors of Highways, p. 150.]

By the Act of 1830, 11 Geo. 4, c. 10, sec. 1, 4 P. L. 83, all Fire Engine men, who shall or may be appointed in any Town or place within this Province, under and by virtue of the Acts relative to Firewards, are exempted from Highway labour.

But the 2d Section directs that their Teams and Horses "shall be compelled and obliged to perform such Highway labour, anything in this or in any other Act contained to the contrary notwithstanding."

THE END.

